No.____________

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

TRANSCRIPT OF RECORD

VOLUME II

PAGES 541-1161

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants

OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.

WM. D. FENTON,
Portland, Oregon.

For Appellants—JNO. L. SNYDER, *et al.:*
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.:*
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.

DAY & BREWER,
Seattle, Wash.

A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:
JAMES C. McREYNOLDS,
Attorney General.

CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.

B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the
Attorney General.

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And afterwards, to wit, on the 2nd day of March, 1909, there was duly filed in said Court a

[PETITION IN INTERVENTION]

in words and figures as follows, to wit:

To the Honorable Judges of the Circuit Court of the United States for the District of Oregon

Come now your petitioners, B. W. Nunnally, John Weist, Geo. E. Walling, Edward E. Stucker, William Weist, Francis Weist, W. D. Sappington, and O. N. Cranor, and respectfully show unto Your Honors that, each of your petitioners is a citizen and resident of the United States; and that, by reason of the facts hereinafter stated, your petitioners have, and each of them has an interest in the subject matter of this suit, and of the things set forth in Complainant's bill of complaint filed herein; and especially has each of your petitioners an interest in, and claim upon a certain portion or parcel of the lands mentioned and described in Complainant's said bill of complaint; such parcel of land so claimed by each of your petitioners being particularly described and the character of claim asserted thereto being fully set forth by each of your petitioners hereinafter. To the end that your petitioners may have their several rights adjudicated, established and enforced without a multiplicity of suits, and that such multiplicity of suits may be avoided, your petitioners pray that they be permitted to intervene herein and be made parties to this suit; and, with this their petition, your petitioners, now and at all times hereafter reserving to themselves all advantages and benefits of exception which can or may be had or taken to any and all errors, imperfections or uncertainties in Complainant's bill contained; for answer thereunto, or to so much, and to such part thereof as your petitioners are advised are material and it is necessary for them to make answer unto, present this their petition, answer and cross-bill by way of asking the affirmative relief to which, as they are advised, the facts alleged entitle them severally to demand:

I.

Your petitioners and intervenors admit, and allege as true the allegations of paragraph One (1) of Complainant's bill of complaint, and make the same a part of this, their answer and cross-bill, the same being as follows:

The defendant Oregon and California Railroad Company, now is, and at all the times hereinafter mentioned as to it was, a corporation organized under the laws of the State of Oregon, and a resident and citizen of said State.

The defendant Southern Pacific Company now is, and at all the times hereinafter mentioned as to it was, a corporation organized under the laws of the State of Kentucky, and a resident and citizen of said last named State.

The defendant Stephen T. Gage is a resident and citizen of the City of San Francisco, in the State of California, and is sued in his own right, and also as sole surviving trustee under a certain deed of trust hereinafter described.

The defendant Union Trust Company now is, and at all the times hereinafter mentioned as to it was, a corporation organized under the laws of the State of New York, and a resident and citizen of said last named State, and is sued in its own right, and also as trustee under a certain mortgage deed hereinafter described.

Each of the defendants John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter and S. Shryock, is a resident and citizen of the County of Columbia in the State of Oregon.

Each of the defendants Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, H. S. Montgomery, and W. A. Noland, is a resident and citizen of the County of Lane in the State of Oregon.

Each of the defendants John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich and James

C. O'Neill is a resident and citizen of the County of Multnomah in the State of Oregon.

Each of the defendants Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter and Frank Wells is a resident and citizen of the County of Clackamas in the State of Oregon.

Each of the defendants C. P. Wells, I. H. Ingram, L. G. Reeves and W. W. Wells is a resident and citizen of the County of Polk in the State of Oregon.

The defendant F. M. Rhoades is a resident and citizen of the County of Douglas in the State of Oregon.

The defendant Marvin Martin is a resident and citizen of the County of Linn in the State of Oregon.

The defendant Roy W. Minkler is a resident and citizen of the County of Clarke in the State of Washington.

Certain of said defendants above named are described otherwise than by Christian name for the reason that the Christian name of each of said defendants is to your Orator unknown.

II.

These, your petitioners and intervenors, admit, and allege as true the allegations of paragraph Two (2) of Complainant's said bill, and make the same a part of this, their answer and cross-bill; the same being as follows:

On or about the twenty-fifth day of July, A. D. 1866, the Congress of the United States passed an Act entitled,

"An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,"
which said Act was approved and became operative upon said twenty-fifth day of July, A. D. 1866, and which said Act is in terms as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* that the 'California and Oregon Railroad Company,' organized under an act of the State of California, to protect certain parties in and to a railroad survey, 'to connect Portland, in Oregon, with Marysville, in California,' approved April 6, 1863, and such company organized under the laws of Oregon as the Legislature of said state shall hereafter designate, be, and they are hereby, authorized and empowered to lay out, locate, construct, finish and maintain a railroad and telegraph line between the City of Portland in Oregon, and the Central Pacific Railroad in California, in the manner following, to-wit: The said California and Oregon Railroad Company to construct that part of the said railroad and telegraph within the State of California, beginning at some point (to be selected by said company) on the Central Pacific Railroad in the Sacramento Valley, in the State of California, and running thence northerly, through the Sacramento and Shasta valleys, to the northern boundary of the State of California; and the said Oregon company to construct that part of the said railroad and telegraph line within the State of Oregon, beginning at the city of Portland, in Oregon, and running thence southerly through the Willamette, Umpqua and Rogue River valleys to the southern boundary of Oregon, where the same shall connect with the part aforesaid to be made by the first-named company; *Provided,* That the company completing its respective part of the said railroad and telegraph from either of the termini herein named to the line between California and Oregon before the other company shall have likewise arrived at the same line, shall have the right, and the said company is hereby authorized, to continue in constructing the same beyond the line aforesaid, with the consent of the State in which the unfinished part may lie upon the terms mentioned in this act, until the said parts shall meet and connect, and the whole line of said railroad and telegraph shall be completed.

SEC. 2. *And be it further enacted,* That there be, and hereby is, granted to the said companies, their successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the line of said railroad, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line; and when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of, other lands, designated as aforesaid, shall be selected by said companies in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first-named alternate sections; and as soon as the said companies, or either of them, shall file in the office of the Secretary of the Interior a map of the survey of said railroad, or any portion thereof, not less than sixty continuous miles from either terminus, the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad, so far as located and within the limits before specified. The lands herein granted shall be applied to the building of said road within the States, respectively, wherein they are situated. And the sections and parts of sections of land which shall remain in the United States within the limits of the aforesaid grant shall not be sold for less than double the minimum price of public lands when sold: *Provided*, That bona fide and actual settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement and occupation, as now provided by law, purchase the same at the price fixed for said lands at the date of such settlement, improvement and occupation: *And provided also*, That settlers under the provisions of the homestead act, who comply with the terms and requirements of said act, shall be entitled, within the limits of said grant, to patents for an amount not exceeding eighty acres of the land so reserved by the United States, anything in this act to the contrary notwithstanding.

SEC. 3. *And be it further enacted,* That the right of way through the public lands be, and the same is hereby granted to said companies for the construction of said railroad and telegraph line; and the right, power and authority are hereby given to said companies to take from the public lands adjacent to the line of said road, earth, stone, timber, water, and other materials for the construction thereof. Said right of way is granted to said railroad to the extent of one hundred feet in width on each side of said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, depots, machine-shops, switches, side tracks, turn-tables, water stations, or any other structures required in the construction and operating of said road.

SEC. 4. *And be it further enacted,* That whenever the said companies, or either of them, shall have twenty or more consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated by this act, the President of the United States shall appoint three commissioners, whose compensation shall be paid by said company, to examine the same, and if it shall appear that twenty consecutive miles of railroad and telegraph shall have been completed and equipped in all respects as required by this act, the said commissioners shall so report under oath to the President of the United States, and thereupon patents shall issue to said companies, or either of them, as the case may be, for the lands hereinbefore granted, to the extent of and coterminous with the completed section of said railroad and telegraph line as aforesaid; and from time to time, whenever twenty or more consecutive miles of the said road and telegraph shall be completed and equipped as aforesaid, patents shall in like manner issue upon the report of the said commissioners, and so on until the entire railroad and telegraph authorized by this act shall have been constructed, and the patents of the lands herein granted shall have been issued.

SEC. 5. *And be it further enacted,* That the grants aforesaid are made upon the condition that the said companies shall keep said railroad and telegraph in repair and use, and shall at all times transport the mails upon said railroad, and transmit despatches by said telegraph line for the government of the United States, when required so to do by any department thereof, and that the government shall at all times have the preference in the use of said railroad and telegraph therefor at fair and reasonable rates of compensation, not to exceed the rates paid by private parties for the same kind of service. And said railroad shall be and remain a public highway for the use of the government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported over said road at the cost, charge and expense of the corporations or companies owning or operating the same, when so required by the government of the United States.

SEC. 6. *And be it further enacted,* That the said companies shall file their assent to this act in the Department of the Interior within one year after the passage hereof, and shall complete the first section of twenty miles of said railroad and telegraph within two years, and at least twenty miles in each year thereafter, and the whole on or before the first day of July, one thousand eight hundred and seventy-five; and the said railroad shall be of the same gauge as the 'Central Pacific Railroad' of California, and be connected therewith.

SEC. 7. *And be it further enacted,* That the said companies named in this act are hereby required to operate and use the portions or parts of said railroad and telegraph mentioned in section one of this act for all purposes of transportation, travel, and communication, so far as the government and public are concerned, as one connected and continuous line; and in such operation and use to afford and secure to each other equal advantages and facilities as to rates, time and transportation, without any discrimination whatever, on pain of forfeiting the full amount of damages sustained on account of such dsicrimination, to be sued for and recovered in any court of the United States, or of any State, of competent jurisdiction.

Sec. 8. *And be it further enacted,* That in case the said companies shall fail to comply with the terms and conditions required, namely, by not filing their assent thereto as provided in section six of this act, or by not completing the same as provided in said section, this act shall be null and void, and all the lands not conveyed by patent to said company or companies, as the case may be, at the date of any such failure, shall revert to the United States. And in case the said road and telegraph line shall not be kept in repair and fit for use, after the same shall have been completed, Congress may pass an act to put the same in repair and use, and may direct the income of said railroad and telegraph line to be thereafter devoted to the United States, to repay all expenditures caused by the default and neglect of said companies or either of them, as the case may be, or may fix pecuniary responsibility, not exceeding the value of the lands granted by this act.

Sec. 9. *And be it further enacted,* That the said 'California and Oregon Railroad Company,' and the said 'Oregon Company' shall be governed by the provisions of the general railroad and telegraph laws of their respective States, as to the construction and management of the said railroad and telegraph line hereinbefore authorized, in all matters not provided for in this act. Wherever the word 'company' or 'companies' is used in this act it shall be construed to embrace the words 'their associates, successors and assigns,' the same as if the words had been inserted, or thereto annexed.

Sec. 10. *And be it further enacted,* That all mineral lands shall be excepted from the operation of this act; but where the same shall contain timber, so much of the timber thereon as shall be required to construct said road over such mineral land is hereby granted to said companies; *Provided,* That the term 'mineral lands' shall not include lands containing coal and iron.

Sec. 11. *And be it further enacted,* That the said companies named in this act shall obtain the consent of the legislatures of their respective States, and be governed by the statutory regulations thereof in all matters pertaining to the right of way, wherever the said road and telegraph line shall not pass over or through the public lands of the United States.

Sec. 12. *And be it further enacted,* That Congress may at any time, having due regard for the rights of said California and Oregon railroad companies, add to, alter, amend, or repeal this act."

Said last described Act of Congress was amended by an Act of Congress approved June twenty-fifth, A. D. 1868, entitled, "An Act to amend an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' " which said amendatory act is in terms as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That section six of an act entitled, 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' approved July twenty-fifth, eighteen hundred and sixty-six, be so amended as to provide that instead of the times now fixed in said section, the first section of twenty miles of said railroad and telegraph shall be completed within eighteen months from the passage of this act, and at least twenty miles in each two years thereafter, and the whole on or before the first day of July, Anno Domini eighteen hundred and eighty."

III.

These, your petitioners and intervenors, admit, and allege as true, paragraph Three (III) of Complainant's bill, and make the same a part of this, their answer and cross-bill; the same being as follows:

No right, title, or interest in or to any of the grants, franchises or other benefits in the State of Oregon, provided for by said Act of Congress approved July twenty-fifth, A. D. 1866, was ever acquired by any corporation or person, or otherwise, except at the time, in the manner, and upon the terms and conditions as hereinafter set forth.

On or about the sixth day of October, A. D. 1866, certain proceedings were had by which certain persons attempted to organize, under the general incorporation law of the State of Oregon, a corporation bearing the corporate name "Oregon Central Railroad Company," having its principal office at the city of Portland, in said State of Oregon.

Said Oregon Central Railroad Comapny projected its railroad line from said city of Portland in a westerly direction to the village of Forest Grove, and thence southerly to and beyond the village of McMinnville, on the *westerly side* of the Willamette River, from which circumstance said company and its line of railroad became known, and therefore will herein be referred to and mentioned, as the "West Side Company" and the "West Side Line" respectively, to distinguish the same from a certain other line of railroad projected at about the same time on the *easterly side* of said river by another railroad company bearing the same corporate name, as hereinafter set forth.

On the tenth day of October, A. D. 1866, the Legislature of the State of Oregon adopted a joint resolution, which on the last aforesaid day was approved by the governor of said State, and which is in terms as follows:

"*Whereas,* The Congress of the United States, at its last session, passed an act granting land to aid in the construction of a railroad and telegraph from the Central Pacific Railroad in California, to Portland, Oregon, and made it the duty of the Legislative Assembly of the State of Oregon to designate the company, organized under the laws of Oregon, which shall receive that part of said land grant lying within the State of Oregon; therefore be it

"*Resolved by the House, the Senate concurring,* That the 'Oregon Central Railroad Company,' a company organized under the general incorporation laws of this State, be and the same is hereby designated as the company which shall be entitled to receive the land granted and all the benefits of an Act of Congress approved July 25, 1866, entitled 'An Act granting land to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, Oregon,' so far as the said grant applies to the State of Oregon."

Assuming in the premises to have been lawfully designated therefor, said West Side Company, on or about the twenty-fifth day of May, A. D. 1867, through its Board of Directors, adopted a resolution in terms assenting to the provisions of said Act of Congress approved July twenty-fifth, A. D. 1866, and, on or about the sixth day of July, A. D. 1867, filed in the office of the Secretary of the Interior of the United States an authenticated copy of the last aforesaid resolution, together with a certified copy of its articles of incorporation, and a certified copy of the aforesaid joint resolution of the legislature of the State of Oregon; and, on or about the twentieth day of August, A. D. 1868, filed in the last aforesaid office a general map of survey of its projected line of railroad.

In the meantime, and on or about the twenty-second

day of April, A. D. 1867, certain persons, residen
of the State of Oregon, then and thereafter contendin
that said West Side Company was never lawfully i
corporated or organized, and designing to secure t
several grants, franchises and other benefits of sa
Act of Congress approved July twenty-fifth, A.
1866, in that behalf caused certain proceedings to
had intended to organize, under the general incorpor
tion law of the State of Oregon, a corporation bearin
the same corporate name, to wit: "Oregon Central Ra
road Company," having its principal place of busine
at the city of Salem, in said State of Oregon.

Said last mentioned Oregon Central Railroad Co
pany projected its line of railroad on the easterly si
of the Willamette River, and, for the reasons herei
before explained, said last mentioned company and i
line of railroad became known as the "East Side Co
pany" and the "East Side Line," respectively, and ther
fore will herein be so referred to and mentioned.

Said East Side Company, in furtherance of i
aforesaid design, on the twentieth day of October, A.
1868, procured a joint resolution to be adopted by t
Legislature of the State of Oregon, and approved
the governor of said State, which said resolution is
terms as follows:

"*Whereas,* The Congress of the United States,
an Act approved July 25, 1866, entitled 'An Act gra
ing lands to aid in the construction of a railroad a

telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' did grant certain lands in the State of Oregon, and confer certain benefits and privileges upon such company organized under the laws of Oregon as the Legislature of said State should thereafter designate; and

"*Whereas,* The Legislative Assembly of Oregon, at its fourth regular session, did adopt a joint, resolution known as 'House Joint Resolution No. 13, designating in terms the Oregon Central Railroad Company as the company entitled to receive the land granted by, and all the benefits and privileges of, the said Act of Congress; and

"*Whereas,* At the time of the adoption of the said joint resolution as aforesaid no such company as the Oregon Central Railroad Company was organized or in existence, and the said joint resolution was adopted under a misapprehension of facts as to the organization and existence of such company; and

"*Whereas,* The designation of the company to receive the lands in the State of Oregon granted, and the benefits and privileges conferred by, the said Act of Congress, yet remains to be made;

"*Be it resolved by the Senate, the House concurring,* That the Oregon Central Railroad Company, a corporation organized at Salem on the twenty-second (22d) day of April, in the year one thousand eight hundred and sixty-seven (1867), under and pursuant to the laws of the State of Oregon, be and the same is hereby designated as the company entitled to receive the lands in Oregon, and the benefits and privileges conferred by the said Act of Congress."

Thereupon a controversy arose between said West Side Company and said East Side Company, as to which of said companies was entitled to the grants, franchises and privileges of said Act of Congress approved July twenty-fifth, A. D. 1866; which controversy continued until on or about the month of January, A. D. 1870, as hereinafter set forth.

Said Act of Congress approved July twenty-fifth, A. D. 1866, prescribed as a condition precedent to the vesting of any of the grants contained therein, that the company designated by the Legislature of the State of Oregon should within one year from said twenty-fifth day of July, A. D. 1866, file in the Department of the Interior its assent to said Act and the terms and conditions thereof.

The time within which to file an assent as aforesaid had expired long prior to the designation of said East Side Company by the Legislature of the State of Oregon on October twentieth, A. D. 1868, as aforesaid. Because of the premises, said East Side Company did apply to the Congress of the United States, during the session thereof commencing in the month of December, A. D. 1868, for an extension of the time within which to file its assent as aforesaid; and, in that behalf, did

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y before Congress said joint resolution of the Legis-
ture of the State of Oregon last herein described, and
d represent that all of the recitals thereof were true,
d that because of the premises, the several grants,
anchises and privileges of said Act of Congress ap-
oved July twenty-fifth, A. D. 1866, has lapsed and
e benefits thereof would be wholly lost to the State
Oregon unless revived by Congress in manner afore-
id.

During the consideration by Congress of said ap-
ication of said East Side Company, said West Side
ompany likewise appeared before Congress and op-
osed said application, and in that behalf contended that
e several grants, franchises and privileges of said
ct of Congress approved July twenty-fifth, A. D.
66, had heretofore become, and then were, vested in
id West Side Company.

Thereafter, and by Act of Congress approved April
nth, A. D. 1869, entitled, "An Act to amend an Act
titled, 'An Act granting lands to aid in the con-
ruction of a railroad and telegraph line from the
entral Pacific Railroad in California, to Portland,
Oregon,' approved July twenty-five, eighteen hun-
ed and sixty-six," Congress did grant the said appli-
tion of said East Side Company, but upon the express
ndition that the lands granted as aforesaid should be
ld to actual settlers only, in quantities not greater than
e-quarter section to one purchaser, and for a price
ot exceeding Two Dollars and Fifty Cents per acre.

Said Act of Congress approved April tenth, A. D
1869, is in terms as follows:

"*Be it enacted by the Senate and House of Repre*
sentatives of the United States of America in Congres
assembled, That section six of an Act entitled 'An Ac
granting lands to aid in the construction of a railroa
and telegraph line from the Central Pacific Railroa
in California, to Portland, in Oregon,' approved Jul
twenty-five, eighteen hundred and sixty-six, be, an
the same is hereby amended so as to allow any railroa
company heretofore designated by the Legislature o
the State of Oregon, in accordance with the first sec
tion of said Act, to file its assent to such Act in th
Department of the Interior within one year from th
date of the passage of this Act; and such filing of it
assent, if done within one year from the passage hereo
shall have the same force and effect to all intents an
purposes as if such assent had been filed within on
year after the passage of said act: *Provided,* That noth
ing herein shall impair any rights heretofore acquired b
any railroad company under said Act, nor shall sai
Act or this amendment be construed to entitle mor
than one company to a grant of land; *And Provided*
Further, That the lands granted by the Act aforesai
shall be sold to actual settlers only, in quantities no
greater than one-quarter section to one purchaser, an
for a price not exceeding Two Dollars and Fifty Cent
per acre."

On or about the eighth day of June, A. D. 1869 said East Side Company, through its Board of Directors, adopted a resolution in the following terms:

"*Whereas,* The Congress of the United States, on the 25th day of July, 1866, passed an Act entitled 'An Act to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' and

"*Whereas,* Such Act provided that such company thereafter organized under the laws of Oregon, and designated by the Legislature of such State, should be entitled to receive and manage the said grant in Oregon, said Act further requiring that the company so organized and designated should, within one year from the date of its passage (to wit: July 25, 1866), file its assent in the Department of the Interior, and

"*Whereas,* No company was designated by such Legislature within the year within which such an assent was required to be filed, and

"*Whereas,* The Legislature of the State of Oregon did, at its regular session in October, A. D. 1868, pass the following joint resolution, designating this company (to wit: 'The Oregon Central Railroad Company' of Salem, Oregon, a company duly incorporated and organized under the laws of the State of Oregon), as the company to take and manage such grant, and receive all the benefits of the same, in the State of Oregon";

(Quoting in full said joint resolution, and which is hereinbefore set forth.)

"*And Whereas,* The Congress of the United States did, in April, A. D. 1869, pass an Act amnedatory of the said Act of July 25, 1866, extending the time in which the company designated might file its said assent, which Act was approved by the President of the United States, April 10, 1869, and is entitled 'An Act to amend an Act entitled an Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon, approved July 25th, 1866';

"*Therefore, Resolved,* That this company, the Oregon Central Railroad Company, of Salem, Oregon, incorporated at Salem, Oregon, April 22, 1867, do hereby accept all the provisions, rights, privileges and franchises of said Act of July 25, A. D. 1866, entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' and of all Acts amendatory thereof and upon the conditions therein specified, and do hereby give our assent and the assent of such company thereto, and the Secretary of this Company is hereby instructed to prepare a true copy of this resolution, certified to under the seal of the corporation, signed by himself as Secretary, and by the President of this company, and such certified copy transmit to and file the same with and in the office of the Secretary of the Interior at Washington City, D. C."

On or about the thirtieth day of June, A. D. 1869, said East Side Company filed in the office of the Secretary of the Interior of the United States a certified copy of said resolution last herein set forth.

On or about the twenty-ninth day of October, A. D. 1869, said East Side Company filed in the office of the Secretary of the Interior of the United States a map of survey and location of the first sixty miles of its projected line of railroad.

On the twenty-fourth day of December, A. D. 1869, said East Side Company completed the construction of the first twenty miles of its aforesaid line of railroad, commencing at the City of Portland, and on the thirty-first day of December, A. D. 1869, the same was examined and approved by commissioners appointed therefor pursuant to the provisions of section four of said Act of Congress approved July twenty-fifth, A. D. 1866.

Said West Side Company wholly failed to complete the construction of any part of its said line of railroad pursuant to the terms and conditions of the aforesaid Acts of Congress; and on or about the month of January, A. D. 1870, said West Side Company acquiesced in the aforesaid substitution of said East Side Company as the recipient of the aforesaid grants, privileges and franchises, and abandoned and waived all claim thereto, and in lieu thereof, applied for, obtained and accepted a separate and similar grant of lands, franchises and other benefits, pertaining to its line of railroad projected as aforesaid, by Act of Congress approved May fourth, A. D. 1870, as hereinafter more particularly set forth.

By reason of the premises, no right, title or interest in or to any of the grants, franchises or other benefits of said Act of Congress approved July twenty-fifth, A. D. 1866, was ever acquired by said West Side Company, or by, through or under it; or by said East Side Company, or by, through or under it, except by virtue of, and expressly subject to, all of the terms and conditions of said Act of Congress approved April tenth, A. D. 1869.

In the meantime said East Side Company had become involved in litigation questioning the validity of its incorporation and organization and its right to use said corporate name. Because of the premises, promoters, officers and stockholders of said East Side Company did, on or about the seventeenth day of March, A. D. 1870, organize the defendant *Oregon and California Railroad Company* under the general incorporation law of the State of Oregon. In that behalf certain articles of incorporation were, on said last mentioned date, executed in triplicate and filed, one in the office of the Secretary of State of the State of Oregon, one in the office of the County Clerk of the County of Multnomah, Oregon, (being the county in which the principal office of said corporation was located), and one in the office of the Secretary of said corporation, at the city of Portland, in said County of Multnomah.

The principal object of said corporation, as stated in its aforesaid articles of incorporation, was to become the successor of said East Side Company, and as such, to receive and exercise the grants, franchises and privileges of said Act of Congress approved July twenty-fifth, A. D. 1866, and the aforesaid Acts amendatory thereof; a copy of which said articles of incorporation is hereto attached marked "Exhibit A" and made a part of this bill.

Pursuant to the premises, on or about the twenty-ninth day of March, A. D. 1870, said East Side Company did execute and deliver to said defendant *Oregon and California Railroad Company* a certain instrument in writing, purporting to assign, transfer and convey to said defendant *Oregon and California Railroad Company* all of the property of said East Side Company, including the right, title and interest of said East Side Company in and to the grants, franchises and other benefits of said Act of Congress approved July twenty-fifth, A. D. 1866, and the aforesaid Acts amendatory thereof; a copy of which said instrument is hereto attached, marked "Exhibit B," and made a part of this bill. Thereafter, and during the months of March and April, A. D. 1870, said instrument last described was recorded in the office of the County Recorder of the several counties in which was situated any part of the lands granted by said Act of Congress approved July twenty-fifth, A. D. 1866, and the aforesaid Acts amendatory thereof.

The purpose, intent and effect of said last described instrument was and is not to operate as a sale or conveyance of any of the lands granted by the aforesaid Acts of Congress, but to constitute said defendant *Oregon and California Railroad Company* the successor of said East Side Company, to construct, complete and equip the line of railroad aforesaid, and, in aid thereof, to receive and exercise the grants, franchises and other benefits in that behalf extended by Congress as aforesaid, and upon all of the terms and conditions aforesaid, and not otherwise.

On said twenty-ninth day of March, A. D. 1870, said East Side Company, by action of its Board of Directors and its stockholders, became and was dissolved and since last mentioned date, no corporate powers or franchises have ever been exercised by, or in the name of, said East Side Company.

On the fourth day of April, A. D. 1870, the defendant *Oregon and California Railroad Company,* through its Board of Directors, adopted a resolution in terms as follows:

"*Whereas,* This company has purchased and taken an assignment from the Oregon Central Railroad Company, of Salem, Oregon, incorporated April 22, 1867, of all the railroad franchises and other property of such corporation, including all the right, title, interest and claim, both legal and equitable, absolute and contingent, of such corporation, of, in and to the lands and all other benefits granted to the Oregon Company by an Act of Congress entitled 'An Act to aid in the construction of a railroad and telegraph line from the Central Pacific

Railroad in California, to Portland, in Oregon,' approved July 25, 1866, and amendments thereto, therefore,

Resolved, That this company do accept the grant conferred by such Act of Congress, and all the benefits and emoluments therein or thereof granted, and upon the terms and conditions therein specified, and

Resolved, That the President and Secretary of this Company be and they are hereby authorized and directed to file the assent of this Company to such Act of Congress and amendments thereto, as aforesaid, in the office of the Secretary of the Interior, which shall be done by filing a copy of these resolutions in such office, certified to under seal of this Company, and signed by the President and Secretary respectively.

Resolved Further, That a copy of the deed of assignment from said Oregon Central Railroad Company, certified to by the President and Secretary under the seal of this Company, be also filed in such office of the Secretary of the Interior, and accompanying these resolutions."

On or about the twenty-eighth day of April, A. D. 1870, the defendant *Oregon and California Railroad Company* filed in the office of the Secretary of the Interior of the United States an authenticated copy of said last described resolution, and a certified copy of said instrument dated March twenty-ninth, A. D. 1870; and at all times thereafter said defendant *Oregon and Cali-*

fornia Railroad Company has assumed, and still assumes, to be the successor of said East Side Company and of all its rights under said Acts of Congress, as aforesaid.

IV.

These, your petitioners, admit, and allege as true, paragraph Four (IV) of Complainant's bill; the same being as follows:

Having abandoned and waived all claim to the grants, franchises and other benefits of said Act of Congress approved July twenty-fifth, A. D. 1866, as hereinbefore set forth, said West Side Company did importune the Congress of the United States to extend to it, in lieu thereof, a similar grant of lands, franchises and other benefits pertaining to its aforesaid projected line of railroad, known as the "West Side Line"; and thereafter, by an Act entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," approved May fourth, A. D. 1870, Congress in that behalf provided as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria, and from a suitable point of junction near Forest Grove to the Yamhill River, near McMinnville, in the State of Oregon, there is hereby granted to the Oregon Central Railroad Company, now engaged in constructing the said road, and to their successors and assigns, the right of way through the public lands of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands materials for constructing said road, and also the necessary lands for depots, stations, side tracks, and other needful uses in operating the road, not exceeding forty acres at any one place; and also, each alternate section of the public lands, not mineral, excepting coal or iron lands, designated by odd numbers nearest to said road, to the amount of ten such alternate sections per mile, on each side thereof, not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of this Act. And in case the quantity of ten full sections per mile cannot be found on each side of said road, within the said limits of twenty miles, other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty-five miles from the track of said road to make up such deficiency.

Sec. 2. *And be it further enacted,* That the Commissioner of the General Land Office shall cause the lands along the line of said railroad to be surveyed with all convenient speed. And wherever and as often as the said company shall file with the Secretary of the Interior maps of the survey and location of twenty or more miles of said road, the said Secretary shall cause the said granted lands adjacent to be segregated from the public lands; and thereafter the remaining public

lands subject to sale within the limits of the said gra
shall be disposed of only to actual settlers at double
minimum price for such lands; *And provided, also,* T
settlers under the provisions of the homestead Act w
comply with the terms and requirements of said A
shall be entitled, within the said limits of twenty mi
to patents for an amount not exceeding eighty ac
each of the said ungranted lands, anything in this
to the contrary notwithstanding.

SEC. 3. *And be it further enacted,* That whene
and as often as the said company shall complete
equip twenty or more consecutive miles of the said r
road and telegraph, the Secretary of the Interior s
cause the same to be examined, at the expense of
company, by three commissioners appointed by h
and if they shall report that such completed sectio
a first-class railroad and telegraph, properly equip
and ready for use, he shall cause patents to be iss
to the company for so much of the said granted la
as shall be adjacent to and coterminous with the s
completed sections.

SEC. 4. *And be it further enacted,* That the s
alternate sections of land granted by this Act, except
only such as are necessary for the company to rese
for depots, stations, side tracks, wood yards, standi
ground, and other needful uses in operating the ro
shall be sold by the company only to actual settlers,
quantities not exceeding one hundred and sixty ac
or a quarter section to any one settler, and at pri

not exceeding Two Dollars and Fifty Cents per acre.

SEC. 5. *And be it further enacted,* That the said company shall, by mortgage or deed of trust to two or more trustees, appropriate and set apart all the net proceeds of the sales of the said granted lands, as a sinking fund, to be kept invested in the bonds of the United States, or other safe and more productive securities, for the purchase from time to time, and the redemption at maturity, of the first mortgage construction bonds of the company, on the road depots, stations, side tracks, and wood yards, not exceeding Thirty Thousand Dollars per mile of road, payable in gold coin not longer than thirty years from date, with interest payable semi-annually in coin not exceeding the rate of seven per centum per annum; and no part of the principal or interest of the said fund shall be applied to any other use until all the said bonds shall have been purchased or redeemed and cancelled; and each of the said first mortgage bonds shall bear the certificate of the trustees, setting forth the manner in which the same is secured and its payment provided for. And the District Court of the United States, concurrently with the State Courts, shall have original jurisdiction, subject to appeal and writ of error, to enforce the provisions of this section.

SEC. 6. *And be it further enacted,* That the said company shall file with the Secretary of the Interior its assent to this Act within one year from the time of its passage; and the foregoing grant is upon condition that said company shall complete a section of twenty or more miles of said railroad and telegraph within two years, and the entire railroad and telegraph within six years, from the same date."

By said words "Oregon Central Railroad Company," in said last mentioned Act of Congress, the Congress of the United States intended to, and did, refer to said West Side Company. The line of railroad prescribed in said last mentioned Act, extending from the city of Portland to McMinnville, by way of Forest Grove, is the identical line of railroad theretofore projected by said West Side Company, as aforesaid.

On or about the second day of July, A. D. 1870, said West Side Company, through its Board of Directors, adopted a resolution in terms assenting to, and accepting, all of the aforesaid provisions of said last mentioned Act of Congress, and on or about the twentieth day of July, A. D. 1870, an authenticated copy of said last described resolution was, by said West Side Company, filed in the office of the Secretary of the Interior of the United States.

On or about the fifteenth day of August, A. D. 1870, all of the so-called capital stock of said West Side Company was acquired by the then owners of the so-called capital stock of said defendant *Oregon and California Railroad Company*, and thereafter all of the so-called capital stock of both of said companies was held by a single interest, and the affairs of said two companies were conducted virtually as a single enterprise until the dissolution of said West Side Company, as hereinafter stated.

V.

These, your petitioners and intervenors, admit, and allege as true, paragraph Five (V) of Complainant's bill, and make the same a part of this, their answer and cross-bill, as follows:

All of the original capital stock of the defendant *Oregon and California Railroad Company,* and substantially all of the capital stock of said West Side Company, was issued without consideration, and, by reason of the premises, neither of said companies had any original capital or other funds for construction or other purposes, except such as was borrowed therefor.

By the issuance and negotiation or pledge of mortgage bonds and otherwise, approximately Eight Million Dollars was, during the year 1870, procured by said defendant *Oregon and California Railroad Company,* and approximately One Million Dollars was, during the year 1871, procured by said West Side Company; and, with the funds thus provided, the work of constructing the aforesaid lines of railroad respectively, was prosecuted until on or about the month of January, A. D. 1873. During said period of construction, said East Side Line was constructed and extended from said city of Portland to a point near Roseburg, a distance of approximately one hundred and ninety-seven (197) miles (including said first section of twenty miles theretofore constructed), and said West Side Line was constructed and completed from said city of Portland to said McMinnville, by way of said Forest Grove, a distance of approximately forty-seven (47) miles.

On or about the said month of January, A. D. 1873, said funds became exhausted and both of said companies became bankrupt and insolvent, and becaue theresof, the construction of both of said lines of railroad was abandoned; and, as to said East Side Line, was not resumed until the month of June, A. D. 1881, as hereinafter set forth; and, as to said West Side Line, was never resumed.

Because of the premises, on or about the twenty-fourth day of July, A. D. 1874, the direction and control of the financial affairs of said two companies were assumed and thereafter exercised by the then creditors thereof, organized under the name "Bondholders Committee." On or about the twenty-ninth day of February, A. D. 1876, all of the so-called capital stock of both of said companies was, for virtually a nominal consideration, acquired by said Bondholders Committee, and thereafter all of the affairs of said two companies were conducted by, and under the direction and control of, said Bondholders Committee.

On or about the sixth day of October, A. D. 1880, for the purpose of merging said West Side Company into said defendant *Oregon and California Railroad Company,* and under the direction and influence of said Bondholders Committee, the said West Side Company did execute and deliver to said defendant *Oregon and*

California Railroad Company a certain instrument, in writing, purporting to assign, transfer and convey to said defendant *Oregon and California Railroad Company* all of the property of said West Side Company, including the right, title and interest of said West Side Company in and to the grants, franchises and other benefits of said Act of Congress approved May fourth, A. D. 1870; a copy of which said instrument is hereto attached, marked "Exhibit C" and made a part of this bill.

The purpose, intent and effect of said last described instrument was and is not to operate as a sale or conveyance of any of the lands granted by said Act of Congress approved May fourth, A. D. 1870, but to constitute said defendant *Oregon and California Railroad Company* the successor of said West Side Company to construct, complete and equip the line of railroad aforesaid, and particularly that part thereof extending from Forest Grove to Astoria, and, in aid thereof, to receive and exercise the grants, franchises and other benefits in that behalf extended by Congress as aforesaid, and upon all of the terms and conditions aforesaid, and not otherwise.

On or about said sixth day of October, A. D. 1880, said West Side Company, by action of its Board of Directors and its stockholders, became and was dissolved; and at all times thereafter said defendant *Oregon and California Railroad Company,* has assumed, and still assumes, to be the successor of said West Side Company, as aforesaid.

Substantially all transactions subsequent to said last mentioned date relate to and affect both of the aforesaid grants of land. Hereafter in this bill of complaint, for convenience, said grant of land created by said Act of Congress approved July twenty-fifth, A. D. 1866, and the aforesaid Acts amendatory thereof, will be described by the words "East Side Grant"; said grant of land created by said Act of Congress approved May fourth, A. D. 1870, will be described by the words "West Side Grant"; and both of said grants will be described by the words "said land grants."

VI.

Your petitioners and intervenors admit, and allege as true, paragraph Six (VI) of Complainant's bill, and make the same a part of this, their answer and cross-bill, as follows:

On or about the seventh day of May, A. D. 1881, the financial affairs of the defendant *Oregon and California Railroad Company* were adjusted in manner following: All of its former capital stock was, by action of its Board of Directors and its stockholders, canceled, for the reasons hereinbefore set forth; the amount of its capital stock was then established, and at all times since has remained, and still is, in the total sum of Nineteen Million Dollars ($19,000,000) composed of Twelve Million Dollars so-called preferred stock and Seven Million Dollars so-called common stock; and in payment of its then existing indebtedness, with accrued interest thereon, all of said new capital stock was then issued, and ever since has been, and still is, outstanding. By the issuance of said new capital stock, and by the use of a part of the proceeds of a new bond issue hereinafter referred to all of its then existing indebtedness was fully paid and discharged, and the several mortgages and other instruments purporting to secure the same, were canceled and satisfied.

On or about the second day of June, A. D. 1881, the defendant *Oregon and California Railroad Company* executed and delivered to Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, as Trustees for the owners and holders of said preferred stock so-called, a certain instrument, in writing, purporting to convey to said Trustees all of the lands of both said land grants, in trust to secure to the owners of said preferred stock so-called, some pretended right or interest in or to said lands, and for certain other purposes, as more particularly appears in said instrument, a copy of which is hereto attached, marked "Exhibit D" and made a part of this bill.

Said deed of trust last described purports to convey, and purports to authorize said Trustees and their successors to sell and convey, said lands to persons other than actual settlers, and in quantities greater than one-quarter section to one purchaser, and for a price exceeding Two Dollars and Fifty Cents per acre, and for purposes other than those described in and by said land grants respectively; and because thereof, and otherwise, said deed of trust was and is in violation and breach of the aforesaid terms, conditions and provisions of each of said land grants respectively.

On or about the twenty-eighth day of June, A. D. 1881, said deed of trust was recorded in the office of the County Recorder of Multnomah County, in the State of Oregon, in Book 27 of Mortgages, at page 179; and thereafter, and at about the same time, was recorded in the office of the County Recorder of the several counties in which was situated any part of the lands granted by either of said land grants.

Thereafter such proceedings were had and action taken under the terms of said deed of trust, and by and with the consent and co-operation of the defendant *Oregon and California Railroad Company*, that the defendant *Stephen T. Gage* became, and he now is, the sole surviving Trustee thereunder; and said defendant *Stephen T. Gage,* individually, and as Trustee as aforesaid, and the defendant *Southern Pacific Company* as the present owner of all of said preferred stock so-called, claim and assert some right, title, interest or lien in, to or upon said lands or some part thereof, under and by virtue of said deed of trust; but because of the premises, neither of said defendants has any right, title, interest or lien in, to or upon any part of said lands.

By the issuance and negotiation of two separate issues of its corporate bonds, bearing date June first, A. D. 1881, and May twenty-sixth, A. D. 1888, respectively, (known and described as "First Mortgage Bonds" and "Second Mortgage Bonds" respectively), the defendant *Oregon and California Railroad Company* did provide further construction funds aggregating approximately Five Million Dollars, and on or about the month of June, A. D. 1881, the work of constructing said East Side Line was resumed, and thereafter was continued until on or about the month of January, A. D. 1884. During said last mentioned period of construction, said East Side Line was constructed and extended from said Roseburg to a point about one and one-quarter miles southerly from Ashland, in the State of Oregon, a total distance of approximately one hundred and forty-five (145) miles.

On or about said month of January, A. D. 1884, said last mentioned construction funds became exhausted, the defendant *Oregon and California Railroad Company* again became bankrupt and insolvent, and the work of construction was again abandoned, and was not resumed until the month of April, A. D. 1887, as hereinafter set forth.

On or about the nineteenth day of January, A. D. 1885, said First and Second Mortgage Bonds being still outstanding, in a suit then instituted and pending in the Circuit Court of the United States for the District of Oregon, wherein certain of the holders of said First Mortgage Bonds were plaintiffs, and said defendant *Oregon and California Railroad Company* and others were defendants, the railroad lines and other property of said defendant *Oregon and California Railroad Company* were placed in the hands of a Receiver then and there appointed therefor by said Court.

On or about the twelfth day of May, A. D. 1887, and during the pendency of said receivership, the defendant *Southern Pacific Company* acquired, and thereafter exercised ownership and control of said defendant *Oregon and California Railroad Company,* as hereinafter more specifically set forth; and, subsequently, under the direction and influence of said defendant *Southern Pacific Company,* certain breaches and violations of the terms and conditions of said land grants respectively hereinafter complained of were committed.

And to the end that Your Honors may be further advised in the premises, and particularly concerning the nature and purpose of the several negotiations and transactions pertaining to, and resulting in, the absorption of the defendant *Oregon and California Railroad Company* by the defendant *Southern Pacific Company,* (in paragraph VII hereof, set forth), your Orator says, that on and prior to said twelfth day of May, A. D. 1887, the general status of said land grants was as follows, to wit:

Under said East Side grant, during the years 1871 to 1877 inclusive, patents for approximately 323,000 acres of land (being lands contiguous to the first 125 miles of said East Side Line), were applied for by, and issued to, the defendant *Oregon and California Railroad Company* as the successor of said East Side Company; except as aforesaid, no patents under said East Side grant were issued until the year 1893.

Under said West Side grant, no patents were ever issued prior to the year 1895.

The total length of said East Side Line is approximately 367 miles; with the exception of the northerly 197 miles thereof, no part of said East Side Line was constructed within the times prescribed by the terms of said East Side grant; and on said twelfth day of May, A. D. 1887, the southerly portion thereof, extending from Ashland to the southern boundary line of the State of Oregon, still remained unconstructed. Of the West Side Line, that part thereof extending from Forest Grove to Astoria was never constructed, and because of the premises, the aforesaid granted lands contiguous to said unconstructed portion, were, by Act of Congress approved January thirty-first, A. D. 1885, entitled, "An Act to declare forfeiture of certain lands granted to aid in the construction of a railroad in Oregon," forfeited to, and the ownership thereof assumed by, the United States of America.

Of the aforesaid granted lands, approximately 250,000 acres had been sold prior to said twelfth day of May, A. D. 1887; and your Orator is informed and believes, and therefore states, that nearly all of the lands so disposed of were sold to actual settlers, and in small quantities, although in many instances in quantities and for prices slightly in excess of the aforesaid limitations prescribed by said land grants respectively.

VII.

Your petitioners and intervenors admit, and allege as true, paragraph Seven (VII) of Complainant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

On or about the month of January, A. D. 1885,
certain railroad syndicate known as the "Southern Pa
cific System," controlling substantially all railroad line
in the southwestern part of the United States, and par
ticularly on the Pacific Coast south of the State of Ore
gon, including the Central Pacific Railroad Company
(which had theretofore become the successor to th
grants, franchises and other benefits in the *State of Cal*
fornia, under said Act of Congress approved Jul
twenty-fifth, A. D. 1866), organized, under the genera
incorporation law of the State of Kentucky, the defend
ant *Southern Pacific Company,* as a general holdin
company for said syndicate; and, on or about the mont
of March, A. D. 1885, said defendant *Southern Pacifi*
Company acquired, and ever since has exercised, a con
trolling interest in each of the corporations constitutin
said Southern Pacific System; and, at about the sam
time, became, and ever since has been, the lessee of eac
of said corporations, whereby it came into possessio
of, and at all times thereafter has operated, all of sai
railroad lines.

Several of the constituent companies of said South
ern Pacific System held lands granted by the Unite
States in aid of the construction of their respective line
of railroad, aggregating many millions of acres. Shor
ly after its organization, the defendant *Southern Pacifi*
Company established a general land department, wit
offices at the city of San Francisco, in the State of Cal
fornia, under the charge of a certain officer known a
its land agent, and thereupon assumed, and thereafte

exercised, through its said land agent, control over the handling and disposing of all of the lands of its constituent companies.

Shortly after the affairs of said defendant *Oregon and California Railroad Company* were placed in the hands of a Receiver, as hereinbefore set forth, said defendant *Southern Pacific Company,* designing to extend its aforesaid railroad system and its aforesaid land holdings by acquiring ownership and control of the defendant *Oregon and California Railroad Company,* in that behalf entered into negotiations with said defendant *Oregon and California Railroad Company* and the bondholders and stockholders thereof and certain other parties hereinafter named; and, for the purpose thereof, the stockholders of said defendant *Oregon and California Railroad Company* became and were organized under the name "Stockholders Committee," certain of the owners of the aforesaid mortgage bonds became and were organized under the name "Frankfort Bondholders Committee," and certain other of the owners of said bonds became and were organized under the name "London Bondholders Committee," said Bondholders Committees representing the owners of substantially all of the aforesaid First and Second Mortgage Bonds of said company.

On or about the twenty-eighth day of March, A. D. 1887, a certain contract in writing was entered into by and between said defendant *Southern Pacific Company,* said defendant *Oregon and California Railroad Com-*

pany, the defendant *Union Trust Company*, said Stockholders Committee, said London Bondholders Committee, said Frankfort Bondholders Committee, and the Pacific Improvement Company, (a corporation organized as hereinafter set forth) a copy of all of the terms of which contract is hereto attached, marked "Exhibit E" and made a part of this bill.

By virtue of said last described contract, all of the corporate securities of the defendant *Oregon and California Railroad Company* were acquired by the defendant *Southern Pacific Company*, as hereinafter set forth; and the general purpose and effect of said contract were such that said defendant *Oregon and California Railroad Company*, (together with its said lines of railroad) was absorbed by, and merged into, said Southern Pacific System, and the independent corporate existence thereof virtually ceased. But it manifestly appears from the subsequent conduct of said defendant *Southern Pacific Company*, and your Orator charges and states, that at the time of the negotiation and execution of said last described contract, it was the purpose and design of said defendant *Southern Pacific Company* to secure control of the aforesaid land grants, and to divert the same from the aforesaid lawful uses and purposes thereof, to the exclusive use, benefit and enrichment of said defendant *Southern Pacific Company;* and to that end, said last described contract was, by the parties thereto, so conditioned, and the conditions, options and provisions thereof were so exercised and performed, that said defendant *Southern Pacific Company* did thereafter maintain said defendant *Oregon and California Railroad Company* a corporation in name and form only, as a mere instrumentality and device, to accomplish, and at the same time to conceal its aforesaid purpose and design, and in that behalf to obtain and dispose of said lands in the name of, and under the guise and pretense of the administration and exercise of the aforesaid land grants by, the defendant *Oregon and California Railroad Company;* and to that end, certain proceedings were had and transactions entered into, including that certain contract of lease and that certain mortgage deed hereinafter set forth.

Pursuant to the terms of said contract of March twenty-eighth, A. D. 1887, on or about the twelfth day of May, A. D. 1887, all of the capital stock and all of said Second Mortgage Bonds of said defendant *Oregon and California Railroad Company* were transferred, assigned and delivered to said Pacific Improvement Company; and all of said First Mortgage Bonds were transferred, assigned and delivered to the defendant *Southern Pacific Company.* . .

During all the times mentioned in this bill as to it, said Pacific Improvement Company was a corporation organized and existing under the laws of the State of California, and wholly owned, controlled and directed by the owners of a majority of the capital stock of the defendant *Southern Pacific Company.* The defendant *Southern Pacific Company* was the actual purchaser of said capital stock and said Second Mortgage Bonds, and paid all the purchase price therefor, and said Pacific Improvement Company never had any beneficial interest therein; but, under the direction and influence of said defendant *Southern Pacific Company,* said Pacific Improvement Company was made a nominal party to said contract of March twenty-eighth, A. D. 1887, for the purpose of concealing the true facts in the premises.

Said Pacific Improvement Company held said capital stock of the defendant *Oregon and California Railroad Company* for the use and benefit of the defendant *Southern Pacific Company,* until on or about the ninth day of April, A. D. 1901, and on or about said last mentioned date, all of said capital stock was transferred to the defendant *Southern Pacific Company,* which, at all times thereafter, has been, and still is, the owner and holder thereof. At all times since said twelfth day of May, A. D. 1887, the defendant *Southern Pacific Company* has controlled and directed the election of directors and officers of said defendant *Oregon and California Railroad Company,* and has directed and controlled the management and conduct and all of the corporate acts of said defendant *Oregon and California Railroad Company,* including all transactions and proceedings in this bill set forth.

Pursuant to the terms of said contract of March twenty-eighth, A. D. 1887, on or about the third day of January, A. D. 1888, the defendant *Southern Pacific Company* and the defendant *Oregon and California Railroad Company* entered into a certain contract of lease in writing, bearing date the first day of July, A. D. 1887, whereby all of the railroad and telegraph lines and other property of the defendant *Oregon and California Railroad Company* were leased to the defendant *Southern Pacific Company* for the term of forty years, upon certain terms and conditions, all of which more specifically appear in said instrument, a copy of all of the terms of which is hereto attached, marked "Exhibit F," and made a part of this bill; which said contract of lease remained in full force and effect until on or about the first day of August, A. D. 1893, upon which last named date the defendant *Southern Pacific Company* and the defendant *Oregon and California Railroad Company* entered into a further contract of lease in writing, bearing date the first day of August, A. D. 1893, whereby all of the railroad and telegraph lines and other property of the defendant *Oregon and California Railroad Company* were leased to the defendant *Southern Pacific Company* for the term of thirty-four years, upon certain terms and conditions, all of which more specifically appear in said instrument, a copy of all of the terms of which is hereto attached, marked "Exhibit G," and made a part of this bill; which said last described contract of lease at all times since said first day of August, A. D. 1893, has been, and still is, in full force and effect. Pursuant to said contracts of lease, the defendant *Southern Pacific Company* did, on or about the sixth day of June, A. D. 1888, enter into possesison of all of the property leased as aforesaid, and at all times thereafter has been, and still is, in full possession thereof, and engaged in the operation of said lines of railroad, and during all of said times has enjoyed, and still is enjoying, all of the benefits and profits thereof.

Pursuant to the terms of said contract of March twenty-eighth, A. D. 1887, and under the direction and influence of the defendant *Southern Pacific Company*, on or about the third day of January, A. D. 1888, the defendant *Oregon and California Railroad Company* executed and delivered to the defendant *Union Trust Company* a certain instrument in writing, bearing date of July first, A. D. 1887, purporting to mortgage and convey in trust to the defendant *Union Trust Company*, certain of the property of the defendant *Oregon and California Railroad Company*, for certain purposes, and upon certain terms and conditions therein expressed, and, among others, to secure the payment of certain bonds thereafter to be issued and negotiated in the name of said defendant *Oregon and California Railroad Company*, a copy of which said instrument is hereto attached, marked "Exhibit H," and made a part of this bill.

By that certain provision of said instrument last described, to-wit:

"And all property, real, personal or mixed, which on the twelfth day of May, 1887, was covered by the mortgage securing the then existing First Mortgage Bonds of the Oregon and California Railroad Company,"

reference was had, and intended to be had, to a certain deed of trust, executed by said defendant *Oregon and California Railroad Company* to Henry Villard, Horace

White and Charles Edward Bretherton, as Trustees, bearing date June first, A. D. 1881, a copy of which is hereto attached, marked "Exhibit I," and made a part of this bill.

On or about the eighteenth day of January, A. D. 1888, said mortgage deed bearing date July first, A. D. 1887, was recorded in the office of the County Recorder of Multnomah County, in the State of Oregon, in Book 68 of Mortgages, at page 287; and thereafter, and about the same time, was recorded in the office of the County Recorder of the several counties in which was situated any part of the lands granted by either of said land grants.

Pursuant to the premises, the defendant *Oregon and California Railroad Company* did execute, and the defendants *Southern Pacific Company* and *Union Trust Company* did negotiate and deliver, certain of the bonds provided for by said mortgage deed bearing date July first, A. D. 1887, said bonds bearing even date therewtih, of which approximately Seventeen Million, Five Hundred Thousand Dollars ($17,500,000) in amount are still outstanding, the exact amount whereof is to your Orator unknown. All of said bonds inured to the exclusive benefit of the defendant *Southern Pacific Company* and were used by the defendant *Southern Pacific Company* to purchase the securities of the defendant *Oregon and California Railroad Company*, as aforesaid, and to complete the construction of, and improve, the lines of railroad leased by it as aforesaid. By reason of the premises, said bonds in fact represent and constitute the indebtedness of the defendant *Southern Pacific Company;* and the payment of all of said bonds, both as to principal and interest was and is, by endorsement thereon in writing, guaranteed by the defendant *Southern Pacific Company.*

In so far as said mortgage deed bearing date July first, A. D. 1887, relates to any of said granted lands, if at all, it purports to convey, and purports to authorize the defendant *Union Trust Company* and its successors to sell and convey, said lands to persons other than actual settlers, and in quantities greater than one-quarter section to one purchaser, and for a price exceeding Two Dollars and Fifty Cents per acre, and for purposes other than those prescribed in and by said land grants respectively; and because of the premises in this bill set forth, said mortgage deed was and is in violation and breach of the aforesaid terms, conditions and provisions of each of said land grants respectively.

The defendant *Union Trust Company,* individually, and as Trustee for the holders and owners of said bonds, claims some right, title, interest or lien, in, to or upon some of said granted lands, under and by virtue of said mortgage deed bearing date July first, A. D. 1887; but because of the premises, the defendant *Union Trust Company* has no right, title, interest or lien, in, to or upon any of said lands, either in its own behalf, or as Trustee as aforesaid.

In the meantime and during the year 1887, (commencing in the month of April and ending in the month of December), the last section of said East Side Line, extending from Ashland aforesaid to the southern boundary line of the State of Oregon, was constructed by said Pacific Improvement Company, under some form of contract with the defendant *Southern Pacific Company,* the particulars whereof are to your Orator unknown; but, in furtherance of its aforesaid purpose and design, on or about the sixth day of June, A. D. 1887, the defendant *Southern Pacific Company* did instigate and cause the defendant *Oregon and California Railroad Company* and said Pacific Improvement Company to enter into a certain contract, by the terms of which the defendant *Oregon and California Railroad Company* agreed to pay for said work of construction in its said bonds thereafter to be issued and guaranteed by the defendant *Southern Pacific Company,* as hereinbefore set forth. And your Orator says that in truth and in fact, at the time of the execution of said contract of June sixth, A. D. 1887, a large part of said work of construction had been performed under some prior contract, as hereinbefore set forth.

On or about the sixth day of June, A. D. 1888, the aforesaid receivership proceedings were dismissed and said Receiver was discharged; all of said First Mortgage Bonds and said Second Mortgage Bonds, (not including said issue of bonds dated July 1st, A. D. 1887), together with all mortgages and trust deeds securing the payment thereof, were canceled and discharged; and thereupon the defendant *Southern Pacific Company* entered into possession of all the property of the defendant

Oregon and California Railroad Company pursuant to the terms of said contract or lease, as hereinbefore set forth.

VIII.

Your petitioners and intervenors admit, and allege as true, paragraph Eight (VIII) of Complainant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

Immediately after said sixth day of June, A. D. 1888, the defendant *Southren Pacific Company,* through its aforesaid land department, assumed, and at all times thereafter has exercised, absolute control over the disposition and sale of the aforesaid granted lands of the defendant *Oregon and California Railroad Company,* conducting all business, however, in the name of the latter company.

Until about the year 1893, there was no marked change in the manner of the disposition of said lands, but, in the meantime, and under the direction and influence of the defendant *Southern Pacific Company,* preparations were made for the future exploitation of said land grants, to-wit:

On or about the month of June, A. D. 1888, a large force of timber cruisers and land examiners was organized and thereafter was kept employed until all of said lands had been examined and appraised and prices fixed thereon without regard to the aforesaid limitations prescribed by said land grants; and your Orator says, that as to at least eighty per cent (80%) of all of said granted lands, the first sale price fixed thereon and the lowset price for which the same were ever offered for sale was greatly in excess of the sum of Two Dollars and Fifty Cents per acre.

During the years 1891 and 1892, anticipating and seeking to evade responsibility for the contemplated violations of the terms and conditions of said grants, and under the direction and influence of the defendant *Southern Pacific Company,* the defendant *Oregon and California Railroad Company* and the defendant *Union Trust Company* adopted quit-claim form of contracts and conveyances for use in making sales of said lands, and thereafter refused to contract for, or give, any other form of conveyance, except in case where, by prior contracts, the defendant *Oregon and California Railroad Company* had obligated itself to do otherwise.

Commencing with about the year 1891, patents were rapidly applied for and obtained, the amount patented under said East Side grant, commencing with the year 1893, aggregating approximately 2,450,000 acres, and the amount patented under said West Side grant, commencing with about the year 1895, aggregating approximately 128,000 acres, being the only patents ever applied for or issued under said West Side grant. No patents have been issued since the year 1906, under either of said land grants, for reasons hereinafter explained.

In the meantime, the defendant *Southern Pacific Company* was engaged in developing a market and demand for said lands among wealthy land speculators and timber men, aided in that behalf by its well-equipped organization therefor, and by an extensive acquaintance previously established by said land department in the sale and disposition of its other land holdings hereinbefore mentioned. A sudden and rapidly increasing demand for said lands in large quantities and at rapidly increasing prices, was developed, commencing with about the year 1894.

Taking advantage of the opportunity to violate the terms and conditions of said land grants, promoted and developed as aforesaid, the defendant *Oregon and California Railroad Company,* under the direction and influence of the defendant *Southern Pacific Company,* from about the year 1894 until about January first, A. D. 1903, sold and disposed of said granted lands in a manner and upon terms in violation and breach of the aforesaid terms and conditions of said land grants respectively, and with the sole object of securing the greatest possible financial benefit therefrom; and in that behalf a large quantity of said lands was sold to speculators and others than actual settlers, and for speculation and purposes other than actual settlement, and in quantities greatly in excess of one-quarter section to one purchaser, to-wit: in quantities from one thousand to forty-five thousand acres to a single purchaser, and for prices greatly in excess of $2.50 per acre, to-wit: for prices from $5 to $40 per acre.

Of said granted lands the defendant *Oregon and California Railroad Company* (in manner aforesaid) has heretofore made approximately 5,306 sales, aggregating approximately 820,000 acres, that is to say:

	Sales.	Acres.
Sales in quantities not exceeding one-quarter section	4930	296,000
Sales in quantities exceeding one-quarter section	376	524,000

Substantially all of said 524,000 acres sold in quantities exceeding a quarter section to one purchaser as aforesaid (and a considerable portion of said other lands sold as aforesaid), were sold to speculators and others than actual settlers and for the purpose of speculation and not for the purpose of settlement and for prices greatly in excess of two dollars and fifty cents per acre. And of said 524,000 acres sold in quantities exceeding one quarter section to one purchaser as aforesaid, approximately 478,000 acres (or about 90 per cent thereof) were sold or conveyed since the year 1897; and of said 478,000 acres, approximately 370,000 acres were sold to 38 purchasers in quantities exceeding 2,000 acres to each purchaser.

Nearly all sales were made by contracts providing for payment of purchase price in from five to ten equal annual installments, and execution of conveyance upon final payment. And although sales were suspended on or about January first, A. D. 1903, as hereinafter stated, many contracts of sale were then pending, as to which the installments falling due have been collected and conveyances executed from time to time down to and including the present, and many of such contracts are still pending.

Of the total sales made as aforesaid, approximately 4,476 have been fully executed and conveyances given aggregating approximately 646,000 acres; and approximately 830 executory contracts are still pending, aggregating approximately 174,000 acres.

For the more specific information of Your Honors, your Orator has prepared a schedule setting forth all said conveyances heretofore made and all said pending contracts, stated separately as to each of said land grants, which schedule is hereto attached, marked "Exhibit J," and made a part of this bill. In said schedule, conveyances are appropriately classified by years, and also according to quantity of land conveyed and purchase price; pending contracts are classified according to quantity of land sold. Your Orator is not informed as to the exact time said pending contracts were negotiated or executed or as to the exact purchase price thereof; but your Orator is informed and believes and therefore states, that all of said pending contracts were negotiated and entered into since the first day of January, A. D. 1898, and prior to the first day of January, A. D. 1903, and that the average purchase price thereof is approximately Ten Dollars per acre. Said schedule (Exhibit J) was compiled on the first day of July, A. D. 1908, but no subsequent transactions affect the matters therein stated, except that a few of said pending contracts have since said compilation matured and merged into final conveyances.

As to the statements contained herein (including said Exhibit J) concerning the number of sales, quantity of land sold, and the purchase price thereof, transactions consisting of executory contracts of sale, which were rescinded or canceled for any reason, and which therefore neither merged into deeds nor constitute pending contracts at the present time, are not included in any of said computations. Transactions relating to the part of said West Side grant which was forfeited to your Orator, as aforesaid, are not included in said computations.

Except as otherwise specifically stated, all statements in this bill concerning the manner of selling and disposing of said lands, apply to each of said land grants.

As between the parties thereto, said mortgage deed bearing date July first, A. D. 1887, to the defendant *Union Trust Company,* has been treated as a lien upon all of said granted lands which remained unsold on the twelfth day of May, A. D. 1887. As to all lands of the last described class which have been sold since said twelfth day of May, A. D. 1887, the defendant *Union Trust Company* has received substantially all of the purchase price, and has joined in the execution of all conveyances. The exact amount thus received by the defendant *Union Trust Company,* and the specific application thereof, are to your Orator unknown; but your Orator says that the proceeds of all sales made since said twelfth day of May, A. D. 1887, have inured to the exclusive benefit of the defendant *Southern Pacific Co* *pany,* by application in payment of the aforesaid bo guaranteed by the defendant *Southern Pacific Compa* or otherwise.

IX.

Your petitioners and intervenors admit, and all as true, paragraph Nine (IX) of Complianant's b and make the same a part of this, their answer and cro bill, the same being as follows:

In the month of October, A. D. 1901, the defend *Southern Pacific Company,* with all of its constitu lines, became merged into that certain railroad syst known as the "Harriman Lines," which said railro system at all times thereafter has held a monopoly railroad transportation affecting a large part of United States, and particularly in the State of Oreg south of Portland.

Thereupon a land department was organized and tablished at the city of San Francisco, to handle, expl and manipulate all of the lands of the constituent co panies of said Harriman Lines, including the aforesa land grants of the defendant *Oregon and Califor* *Railroad Company.* All transactions concerning last named land grants were conducted as before in name of the defendant *Oregon and California Railro* *Company.* Sales were continued as before until on about January first, A. D. 1903.

On said first day of January, A. D. 1903, there mained unsold of said granted lands approximate

2,373,000 acres consisting of approximately 2,080,000 acres which have been heretofore patented under said land grants, and approximately 293,000 acres of unpatented lands which are now claimed by the defendant *Oregon and California Railroad Company* under and by virtue of said land grants. Said lands remaining unsold as aforesaid will hereinafter be described by the words "said unsold lands."

Approximately 1,800,000 acres of said unsold lands are situated southerly from Eugene, and constitute nearly one-half, in alternate sections, of all lands within approximately forty miles of said line of railroad from Eugene to the southerly boundary line of the State of Oregon, only a small portion of said granted lands in that part of the East Side grant having ever been sold. The territory in which said unsold lands are situated was and is wholly dependent for railroad transportation on the railroad lines of the defendant *Oregon and California Railroad Company,* now operated by the defendant *Southern Pacific Company* as one of the constituent companies of said Harriman Lines as aforesaid.

Since said first day of January, A. D. 1903, and particularly during the last preceding two years, certain persons exceeding one thousand in number have severally applied to the defendant *Oregon and California Railroad Company* to purchase certain of said unsold lands in quantities not exceeding one hundred and sixty acres, or a quarter section to each one of them, said applicants to purchase intending and desiring to purchase said lands so applied for by them respectively for the purpose of actually settling thereupon and making a permanent home thereof, and several of said applicants to purchase having actually settled and established a permanent home upon the land so applied for by them respectively; and at the time of said applications to purchase each of said applicants did tender to the defendant *Oregon and California Railroad Company* the sum of Two Dollars and Fifty Cents for each of the lands so applied for as the purchase price thereof.

And in addition to the said applicants to purchase, a large number of persons are ready and willing to settle upon said lands, and to purchase the same for the purpose of actual settlement thereupon and of making a permanent home thereof, in quantities, for the price, and upon terms as prescribed by said land grants respectively, but are deterred therefrom by the defendant *Oregon and California Railroad Company,* as hereinafter stated.

Notwithstanding the premises, and in violation and breach of the aforesaid terms and conditions of said land grants respectively, the defendant *Oregon and California Railroad Company,* under the direction and influence of the defendant *Southern Pacific Company* as one of the constituent companies of said Harriman lines, on or about the first day of January, A. D. 1903, withdrew from sale all of said unsold lands, and at all times thereafter has refused, and still refuses, to sell any part thereof to actual settlers or for purposes of actual settlement, or in quantities or for prices as prescribed by the terms of said land grants respectively, or at all;

and particularly has at all times refused, and still does refuse, to entertain any of the aforseaid applications to purchase, or to sell any of the lands applied for as aforesaid, to the persons aforesaid, upon the terms aforesaid, or upon any terms whatsoever. And ever since said first day of January, A. D. 1903, the defendant *Oregon and California Railroad Company* has not only failed and neglected to encourage or promote the settlement of said lands, or the purchase thereof by actual settlers, or for the purpose of actual settlement, but by divers means and methods has at all times discouraged, obstructed, forbidden and prevented the settlement of said lands or any part thereof, and the purchase thereof or any part thereof, upon the terms prescribed by said land grants, or otherwise, by actual settlers or for the purpose of actual settlement.

Since said first day of January, A. D. 1903, the defendant *Oregon and California Railroad Company* has assumed, and now asserts, an absolute and unconditional estate in and to all of said unsold lands, and has attempted, and still does attempt, to convert its aforesaid conditional estate into an unconditional estate, in violation and breach of the aforesaid terms and conditions of said land grants. And by reason of the aforesaid nominal corporate character of the defendant *Oregon and California Railroad Company,* and the further premises herein set forth, the unconditional estate so asserted in its name has inured to the benefit of, and has been exercised by, the defendant *Southern Pacific Company* as one of the constituent companies of said

Harriman Lines. The practical effect of the premises is the same as if all of said unsold lands had been conveyed to the defendant *Southern Pacific Company* for the use and benefit of said railroad syndicate.

By reason of the premises, and in violation of the express terms and conditions as well as the plain intendment of said land grants respectively, all of said unsold lands, and the full value thereof, have been converted to the use and benefit of the defendant *Southern Pacific Company*, as one of the constituent companies of the said Harriman Lines; and a virtual land monopoly has been created, and ever since said first day of January, A. D. 1903, has been maintained, and hereafter will be maintained, for the selfish uses and purposes of the defendant *Southern Pacific Company* and said railroad syndicate, enabling said railroad syndicate, among other things, to control and restrict commercial and industrial development of the territory tributary to said line of railroad, and thereby prevent the construction and establishment of competing railroad lines, which would naturally be attracted by the increase in production that would attend a normal and unrestricted development of industrial and commercial resources, if said granted lands should be sold to actual settlers and for the purpose of actual settlement pursuant to the terms and conditions of said land grants.

And your Orator says, that because of the premises, the industrial and commercial development of those portions of the State of Oregon wherein are situated said unsold lands, has been, and will continue to be, seriously retarded if not completely checked.

Except as otherwise specifically stated, all statements herein contained concerning the withdrawal of said lands from sale, the circumstances, purposes and effects thereof, together with the subsequent opportunities to sell said lands to actual settlers and for the purpose of actual settlement, and the conduct of the defendant *Oregon and California Railroad Company* in relation thereto, apply to each of said land grants.

A schedule of all of said unsold lands which have heretofore been patented, described by governmental subdivision, tabulated by counties, and separately stated as to each of said land grants, is hereto attached, marked "Exhibit K," and made a part of this bill. Said schedule has been prepared from the annual return of said lands for purpose of taxation, made by the defendant *Oregon and California Railroad Company* to the County Assessors of the several counties in which said lands are situated; said annual tax returns purport to contain all of said granted lands which have been heretofore patented and which remain unsold, and your Orator is informed and believes, and therefore states, that the same is correct, but concerning which a full discovery is desired herein. Your Orator is unable to set forth with particularity the unpatented lands claimed as aforesaid, as to which, therefore, a full discovery is desired.

None of said unsold lands have ever been reduced to possession, or in any way improved, unless it be by persons claiming to have settled thereupon, and seeking to purchase the same, as hereinbefore, and hereinafter stated. The reasonable present value of said unsold lands exceeds the sum of $40,000,000.

None of said unsold lands now are, or ever were, necessary to reserve for depots, stations, side tracks, wood sheds, standing ground, or any other needful uses in operating any of said railroad lines or any part thereof, and no part of said lands ever was reserved or used, or now is reserved or used, or is intended to be reserved or used, for any of said purposes.

X.

Your petitioners and intervenors admit, and allege as true, paragraph Ten (X) of Complainant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

In addition to the purchase price received from the aforesaid sales of said lands, the defendant *Oregon and California Railroad Company* has received and enjoyed certain other benefits on account of said granted lands, to-wit:

A large number of contracts of sale have been forfeited because of defaults in payment of the annual installments falling due thereon, and the installments previously paid have been retained. Your Orator is not advised as to the exact amount realized in this manner, but is informed and believes, and therefore states, that it exceeds the sum of One Hundred Thousand Dollars ($100,000). A full discovery in the premises is hereby sought.

A considerable portion of said lands has, from time to time, been leased for certain rentals paid therefor to the defendant *Oregon and California Railroad Company*. Your Orator is not advised as to the amount realized in this manner, and a full discovery in the premises is hereby sought.

The defendant *Oregon and California Railroad Company* has cut and used large quantities of timber growing upon said lands, and has also sold large quantities of said timber, receiving the consideration therefor. Your Orator is not advised as to the amount realized in this manner, but is informed and believes, and therefore states, that it exceeds the sum of Two Hundred Thousand Dollars ($200,000). A full discovery in the premises is hereby sought.

And in divers other ways the defendant *Oregon and California Railroad Company* has received and enjoyed financial benefits on account of said granted lands, the particulars concerning which are unknown to your Orator, and a full discovery in the premises is hereby sought.

XI.

Your petitioners and intervenors admit, and allege as true, paragraph Eleven (XI) of Complainant's bill, and make the same a part of this, their answer and cross-bill, as follows:

The defendant *Oregon and California Railroad Company* has repeatedly threatened, and still threatens to, and will, unless restrained therefrom, sell, contract for sale, convey, or in some manner encumber or impai the title of, said unsold lands or some part thereof, i violation of the terms and conditions of said land grant respectively; and the defendant *Oregon and Cal fornia Railroad Company* has heretofore cut larg quantities of the timber growing upon sai unsold lands and has otherwise committed wast thereupon, and by contract and otherwise, ha permitted and invited others so to do; and th defendant *Oregon and California Railroad Compan* threatens to, and will, unless restrained therefrom by thi Court, continue to commit waste upon said unsold land and particularly as to the timber and other natural prod ucts thereof, and will continue to permit, contract fo and invite others so to do, to the great and irreparabl injury of your Orator in the premises.

XII.

Your petitioners and intervenors admit, and alleg as true, paragraph Twelve (XII) of Complainant' bill, and make the same a part of this, their answer an cross-bill, the same being as follows:

Until the year 1894 there was substantially no de mand for said granted lands, except for the purpose o settlement and by persons of limited means able to pur chase said lands only in small quantities and at reason able prices, and nearly all sales were of that characte During a large part of said period, the defendant *Ore gon and California Railroad Company* maintained a immigration bureau, engaged in inducing immigratio and settlement upon said lands, and ostensibly was not otherwise engaged in soliciting or promoting sales. By reason of the premises, the occasional violations of the terms and conditions of said land grants occurring during said period, were concealed and were generally unknown, until ascertained by your Orator as hereinafter stated.

As hereinbefore set forth, a sudden demand arose for said lands commencing about the year 1894, among wealthy speculators and timber men, promoted and developed as aforesaid; and the greater part of the substantial wrongs and violations herein complained of were committed subsequent to that time. But your Orator says that nearly all of the sales consummated after that time were made by executory contracts of sale, which were not placed of record, and which did not merge into deeds for many years thereafter, and a considerable portion of which are still pending. Many of the conveyances for excessive quantities of said lands were not placed of record until recently, and many are still unrecorded. In many instances of sales in excessive quantities, the lands were attempted to be conveyed by several deeds, each of which was for a small quantity of land, whereby the true facts were concealed.

On or about the first day of January, A. D. 1903, all of said unsold lands were withdrawn from sale, and thereafter converted to certain wrongful and unlawful uses and purposes, as hereinbefore set forth. But, designing to conceal the premises from your Orator and the general public, the defendant *Oregon and California*

Railroad Company has, from time to time, falsely and deceitfully represented that said lands were withdrawn from sale for divers temporary reasons, and with the intention of resuming the sale thereof. An alleged confusion of the records of said land department, the alleged destruction of said records during the San Francisco fire, and other similar excuses were successively used to conceal the true character of said transaction.

XIII.

Your petitioners and intervenors admit, and allege as true, paragraph Thirteen (XIII) of Complainant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

By reason of the premises, the several wrongful and unlawful transactions in this bill complained of, were concealed from, and wholly unknown to, your Orator, until ascertained as hereinafter stated. On or about the 14th day of February, A. D. 1907, because of the great injury inflicted upon commercial and industrial conditions as aforesaid, and it having become manifest that the several aforesaid representations concerning the withdrawal of said lands from sale were false, the Legislature of the State of Oregon adopted and communicated to your Orator a certain memorial charging in general terms the true facts in the premises (a copy of which memorial is hereto attached, marked "Exhibit L," and made a part of this bill); whereupon the further issuance of patents was suspended, and an investigation of the subject was instituted by your Orator, through its

Attorney General, which investigation was concluded on or about the month of January, A. D. 1908. Thereupon the subject was presented to the Congress of the United States, and thereafter, by Joint Resolution, approved April thirtieth, A. D. 1908, Congress did provide as follows:

"That the Attorney General of the United States be, and he hereby is, authorized and directed to institute and prosecute any and all suits in equity, actions at law, and other proceedings which he may deem adequate and appropriate to enforce any and all rights and remedies of the United States of America in any manner arising or growing out of or pertaining to either or any of the following described Acts of Congress, to wit: 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon, approved July twenty-fifth, Eighteen Hundred and Sixty-Six, as amended by the Acts approved June twenty-fifth, Eighteen Hundred and Sixty-Eight, and April tenth, Eighteen Hundred and Sixty-Nine. * * Also 'An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon,' approved May fourth, Eighteen Hundred and Seventy, including all rights and remedies in any manner relating to the lands, or any part thereof, granted by either or any of said Acts; and in and by any and all such suits, actions or proceedings, the Attorney General shall, in such manner as he shall deem appropriate, assert all rights and remedies existing in favor of the United States, relating to the subject of such suits, actions and proceedings, including the claim on behalf of the United States that the lands granted by each of said Acts respectively, or any part thereof, have been and are forfeited to the United States by reason of any breaches or violations of any of the terms or conditions of either or any of said Acts which may be alleged and established in any such suits, actions or proceedings; it not being intended hereby to determine the right of the United States to any such forfeiture or forfeitures, but it being intended to fully authorize the Attorney General in and by such suits, actions or proceedings to assert on behalf of the United States and the court or courts before which such suits, actions or proceedings may be instituted or pending to entertain, consider, and adjudicate the claim and right of the United States to such forfeiture or forfeitures, and if found to enforce the same."

Pursuant to the provisions of said last mentioned Joint Resolution of Congress, this suit is instituted.

XIV.

For convenience of reference, and without making the same a part of their answer and cross-bill, your intervenors insert paragraph XIV of Complainant's bill, as follows:

By reason of the several aforesaid breaches and violations of the aforesaid terms, conditions and provisions of said land grants respectively, certain of said granted lands and certain estates in certain of said granted lands have been, and are, forfeited to your Orator, the United States of America, free from any and all right, title, interest, lien or claim of the defendants herein, or either or any of them, or any one claiming by, through or under them or either or any of them. Among the lands and estates in lands so forfeited to your Orator, are, to-wit:

(1) All of said unsold lands;

(2) Any and all right, title and interest of any kind or nature whatsoever, vested, contingent or expectant, of any, of the defendants herein, or either or any of them, in, to or concerning any of the lands granted under, or by, either of said land grants respectively.

Pursuant to the authority and direction contained in said joint resolution of Congress approved April 30th, A. D. 1908, your Orator does hereby assert title to, and does hereby resume the title of, all of said lands and estates in lands forfeited to your Orator as aforesaid.

In addition to the lands and estates in lands above specified, certain of said granted lands which have been heretofore sold in violation of the terms and conditions of said land grants, and certain estates therein, likewise have been and are forfeited to your Orator, but are not included in this suit, for reasons following, to-wit:

The lands disposed of in violation of the terms and conditions of said land grants respectively, as aforesaid, were sold, contracted for sale, or conveyed to a large number of purchasers. Including alleged rights of succession by purchase, conveyance, mortgage, descent, devise and otherwise, more than three thousand (3,000) persons, firms and corporations residing in divers parts of the United States and other parts of the world, now assert some right, title, interest or lien in, to or upon the lands sold, contracted for sale and conveyed in violation of the terms and conditions of said land grants respectively, as aforesaid. The names and places of residence of only a few of said persons, firms and corporations are as yet known to your Orator, and because of the multiplicity and complexity of said transactions, your Orator will be unable to ascertain them in time to include said parties in this suit. Said lands were sold and purchased as aforesaid, and alleged subsequent rights have been acquired therein, under greatly varying circumstances and conditions, and because of the premises, it would be inequitable to attempt to secure an adjudication of the rights of all of said parties by making only a few of them parties defendant as representatives of all thereof. To require the making of all of said persons, firms and corporations parties to this suit, or to otherwise require an adjudication herein of the respective rights in the premises, would indefinitely postpone and ultimately defeat the rights, equities and remedies of your Orator pertaining to said unsold lands, as to which the public interests require a speedy and complete adjudication and enforcement.

Therefore, to the end that justice and equity may be suitably administered in the premises, your Orator institutes this suit for the purpose of obtaining without unnecessary delay, an adjudication and enforcement of the rights, equities and remedies of your Orator against the defendants herein, pertaining to said unsold lands, and otherwise, as more specifically appears in the prayer of this bill; and hereafter, and as soon as your Orator shall be sufficiently advised in the premises, separate and further suits will be instituted for the purpose of asserting and enforcing the rights, equities and remedies now or at any time hereafter existing in favor of your Orator (and not adjudicated or enforced herein) pertaining to any of said granted lands sold or conveyed as aforesaid, or any part thereof, or in any manner arising or growing out of any and all sales and conveyances of said granted lands in violation of any of the terms and conditions of said land grants respectively.

Your intervenors admit that the resolution set forth in said paragraph was adopted by the Congress of the United States, as alleged by Complainant, but they deny that under authority, or by virtue of said resolution, or otherwise, Complainant has the right to ask, or the Court to grant a decree of forfeiture of said grant as to the lands applied for thereunder by these, your intervenors; or that Complainant has the right to assert title thereto, or resume possession of any of said lands so applied for by your intervenors.

Your intervenors further deny that, by reason of any of the several alleged breaches or violations of the terms, conditions or provisions of said grant, or otherwise, by any of parties complained of in Complainant's bill, or by reason of anything done or suffered by any of said defendants, certain, or any of said lands, or certain, or any estates in any of said granted lands, have been, or are forfeited to Complainant, free from all or any right, title or interest, lien or claim of the defendants or either or any of them, or any one claiming by, through or under them or either of them, as alleged in Complainant's bill or otherwise; and your intervenors show that each of them has a valid and subsisting claim upon the title to and possession of a certain part or parcel of said granted lands, and that such right, title and possession should be established through defendant Oregon & California Railroad Company under and by virtue of the terms of said grants, as set forth and alleged by Complainant in its bill filed herein. The particulars of claim of title, and the lands applied for by each of your intervenors are specifically alleged and shown hereinafter, each intervenor showing separately the nature of his claim, and the particular lands claimed by each.

XV.

Your intervenors admit, and allege as true, paragraph Fifteen (XV) of Complainant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

The property described in said mortgage deed bearing date July first, A. D. 1887, (not including any of said granted lands), is of a value largely in excess of the amount of all of said bonded indebtedness purported to be secured by said mortgage deed, and is amply security therefor; your Orator, however, expressly denies that any of said granted lands are included in the property described in said mortgage deed, or that the defendant *Union Trust Company,* as trustee or otherwise, or any other person, firm, association or corporation, has any right, title, interest or lien in, to or upon any of said lands by virtue of said mortgage deed.

XVI.

These intervenors admit, and allege as true, paragraph Sixteen (XVI) of Complainant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

Pursuant to the rules and regulations of the Department of the Interior in that behalf duly adopted and in force, all of the aforesaid patents were issued and based upon applications in writing therefor, from time to time filed in the appropriate land office of the United States by the defendant *Oregon and California Railroad Company,* as the successor of said East Side Company and said West Side Company respectively, which said applications contained descriptive lists of the lands so claimed and for which patents were so applied for; and each of which said applications was accompanied and supported by a certain affidavit in writing signed and sworn to by a certain agent of the defendant *Oregon and California Railroad Company* thereto duly authorized, to the effect, among other things, that all of the lands so claimed and for which patents were so applied for, were of the character contemplated by the grant under which they were claimed and for which patents were applied for as aforesaid; and believing and relying upon the statements contained in said applications and said affidavits, your Orator issued said patents.

XVII.

Your intervenors admit and allege as true paragraph Seventeen (XVII) of Complainant's bill, and make the same a part of this, their answer and cross-bill, as follows:

In making sales of said lands as aforesaid, the defendant *Oregon and California Railroad Company* has, in and by its contracts and conveyances relating thereto, and particularly prior to the sixth day of June, A. D. 1898, made certain valuable reservations unto itself, as follows:

"Reserving, however, a strip of land one hundred feet wide, to be used by the Oregon & California Railroad Company for right of way and other purposes, when the railroad of said Oregon & California Railroad Company, or any of its branches, is or shall be located upon the premises; and the right to take all water needed for the operating of said railroad, and also reserving and excepting from said described premises, so much and such parts thereof as may be mineral lands, other than coal and iron."

All of which said reservations, being in effect the creation of permanent estates in its own favor in and to a large part of said granted lands in violation and breach of the aforesaid terms and conditions of said land grants respectively, were and are null and void. But notwithstanding the premises, the defendant *Oregon and Cali-*

fornia Railroad Company and each of the other defendants herein, claims some inchoate right, title or interest, in and to the lands sold as last aforesaid, under and by virtue of said reservations, concerning which a full discovery is hereby sought; and such right, title and interest, if any, (which is denied), were and are subject to the right of forfeiture and to the several other rights, equities and remedies of your Orator in the premises, asserted herein.

XVIII.

Your intervenors admit, and allege as true, all of paragraph Eighteen (XVIII) of Complainant's bill, and make the same a part of this, their answer and cross-bill, *excepting* the clause therein reading "and any and all such rights, title, interests or liens, if any, were and are subject to the right "of forfeiture . . . asserted herein." Which said clause and allegation your intervenors deny in so far as the same may or might affect the claim or right of any of your intervenors in any of the lands claimed by them or either of them. Said paragraph is as follows:

In addition to the several claims of the defendants in this bill specifically mentioned, the defendants and each of them claim some right, title, interest or lien in, to or upon some or all of said granted lands, the particulars whereof are to your Orator unknown, concerning which a full discovery is hereby sought; and any and all such rights, titles, interests or liens, if any, were and are subject to the right of forfeiture and to the several other rights, equities and remedies of your Orator in the premises, asserted herein.

XIX.

Your intervenors admit, and allege as true, paragraph Nineteen (XIX) of Complainant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

A schedule, accurately setting forth all maps of survey and location filed in the office of the Secretary of the Interior of the United States pursuant to the provisions of said land grants respectively, separately stated as to each of said land grants, is hereto attached, marked "Exhibit M" and made a part of this bill.

A schedule, accurately setting forth the time of the construction and completion of the several sections of said railroad and telegraph lines, together with the examination, approval and acceptance thereof, separately stated as to each of said railroad and telegraph lines, is hereto attached, marked "Exhibit N" and made a part of this bill.

A schedule, accurately setting forth the quantity of lands patented from time to time under each of said land grants, compiled by years, and separately stated as to each of said land grants, is hereto attached, marked "Exhibit O" and made a part of this bill. .All of said patents were applied for by and issued to the defendant *Oregon and California Railroad Company,* as the successor of said East Side Company and said West Side Company respectively.

XX.

Your intervenors admit, and allege as true, paragraph Twenty (XX) of Complainant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

Each of the defendants (other than the defendants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage and Union Trust Company) asserts some right, title or interest in or to certain of said unsold lands; the general nature and basis of the claims of said last described defendants are identical, and are as follows, to-wit:

Each of said last described defendants alleges to have in good faith actually settled upon certain of said unsold lands, not exceeding one-quarter section or 160 acres in quantity, with the intention of making a permanent home thereof, and to have applied to the defendant *Oregon and California Railroad Company* to purchase the lands alleged to have been settled upon as aforesaid, and to have tendered to said defendant *Oregon and California Railroad Company* the sum of $2.50 for each acre applied for as aforesaid, as the purchase price thereof, and that the defendant *Oregon and California Railroad Company* has at all times refused, and still refuses, to entertain said applications to purchase, or to sell or convey to said last described defendants respectively the lands so applied for by them respectively, upon the aforesaid terms, or otherwise.

And by reason of the premises alleged by said last described defendants respectively as aforesaid (the truth whereof is to your Orator unknown) said last described defendants severally assert some right, title or interest in or to the lands so applied for by them respectively as aforesaid; and each of said last described defendants has instituted a suit in equity against the defendants *Oregon and California Railroad Company, Stephen T. Gage,* and *Union Trust Company,* the general purpose and nature of which is to compel a sale and conveyance of the lands so applied for to said parties applying to purchase the same respectively, as aforesaid; all of which said suits are still pending and none of which have proceeded to any issue other than exceptions to certain portions of the several bills in said suits.

The said suit instituted by the defendant *Roy W. Minkler* is pending in the Circuit Court of the United States for the Western District of the State of Washington; all of the other said suits are pending in the Circuit Court of the United States for the District of Oregon.

A schedule accurately setting forth, as to each of said suits, the court number thereof, the names of the parties thereto, the date of the institution thereof, and a description of the land involved therein, separately stated as to each of said land grants, is hereto attached, marked "Exhibit P" and made a part of this bill.

Your Orator leaves said defendants to more specifically set forth herein their respective alleged rights in the premises, as they may be advised.

Unless enjoined therefrom as hereinafter prayed, said defendants instituting said suits as aforesaid will proceed, or attempt to proceed, therein to some form of final judgment or decree. Each of said suits relates to and materially affects the rights and equities of your Orator in the premises. The rights and equities of your Orator in this bill set forth, and the relief hereinafter prayed for, relate to and affect all of the aforesaid alleged rights of said defendants respectively. If said suits shall proceed further, the rights and remedies of your Orator in the premises will be hindered, obstructed and delayed, if not substantially prejudiced. And because of the multiplicity of said suits, your Orator has made said persons parties defendant in this suit, to the end that further proceedings in each of said suits instituted and pending as aforesaid may be enjoined, and, if the Court shall so order, said parties be permitted to set forth herein their respective claims, for adjudication.

XXI.

Your intervenors hereby re-affirm and re-allege all the parts of Complainant's bill hereinbefore admitted to be true, and they rely upon said parts of said bill so set out herein and admitted and alleged to be true, together with the allegations hereinafter set forth, as the basis of their several claims, and the grounds for the relief so sought by them and by each of them in this suit.

Your intervenors, for the purpose of presenting and showing Your Honors the particular and special interest which each of them has asserted, and now claims in the lands, and the subject matter of this suit; and for the purpose of showing that they are, and each of them is entitled to affirmative relief, and to the end that their particular and respective interests in the subject matter of this suit may be protected, established and enforced by decree of Your Honors' Court herein, allege:

That your intervenors are some of the persons mentioned and referred to in paragraph Nine (IX) of Complainant's bill, as having heretofore applied to the defendant Oregon and California Railroad Company to purchase certain of said unsold lands embraced in said grants, in quantities not exceeding one hundred and sixty acres, or one quarter section to each of said persons, for the purpose of actually settling thereon, and at the time of making such application, made tender to said defendant, Oregon and California Railroad Company of the sum of two dollars and fifty cents per acre for each acre of land so applied for by each of said persons as the purchase price thereof:

That during all the times herein alleged as to them, each of your intervenors was, and now is, a citizen of the United States, and a resident thereof; and, at the time of making such application to purchase, each of your intervenors was, and now is legally qualified and entitled to purchase and acquire the particular land applied for, each having done every act required by the terms of the Acts of Congress making said grants of lands as hereinbefore set out:

That said intervenor, B. W. Nunnally, did, a long time prior to the commencement of this suit, apply to the defendant, the Oregon and California Railroad Company, to purchase the following described lands and real property, to-wit: The S. W. quarter of Section 23 in Township 4 North, of Range 3 W. of the Willamette Meridian.

That said lands and real property consist of one quarter section of land and are a part of the lands described in the Acts of Congress referred to in Complainant's bill of complaint and herein, and described in the bill of complaint as being unsold lands, and in fact are lands which have not been disposed of or sold by the defendant, the Oregon and California Railroad Company; that your intervenor at said time duly applied to said defendant, the Oregon and California Railroad Company, to purchase said land and offered to pay said company the sum of Two Dollars and Fifty Cents per acre, or Four Hundred Dollars for said quarter section of land, and at the time said application to purchase was made your intervenor duly tendered in lawful money of the United States the said Two Dollars and Fifty Cents per acre or Four Hundred Dollars for said land, and demanded a deed of conveyance therefor under the terms and conditions of said grant, which said tender and offer of your intervenor was refused and denied by said defendant, the Oregon and California Railroad Company; that at the time your intervenor made said offer to purchase said quarter section of land and ever since said time he intended to and was and is qualified, ready, able and willing and now intends to make an actual settlement upon said lands and occupy and use the same as an actual settler, and so informed the defendant, the

Oregon and California Railroad Company, at the time said application for purchase and tender was so made to said company. And he herewith offers to tender into Court the said sum of Four Hundred Dollars, lawful money of the United States, to be paid and delivered to the Oregon and California Railroad Company, or to the person, persons, corporation or corporations qualified and authorized to receive the same, upon the execution and delivery to your intervenor of a good and sufficient deed of conveyance conveying to him the title to said 160 acres, or quarter section of land hereinbefore described, or upon such terms as to Your Honors may seem to be equitable and just.

That said intervenor, William Weist, did, a long time prior to the commencement of this suit, apply to the defendant, the Oregon and California Railroad Company, to purchase the following described lands and real property, to-wit: The S. W. quarter of Section 23 in Township 4 South, of Range 5 E. of the Willamette Meridian.

That said lands and real property consist of one quarter section of land and are a part of the lands described in the Acts of Congress referred to in Complainant's bill of complaint and herein, and described in the bill of complaint as being unsold lands, and in fact are lands which have not been disposed of or sold by the defendant, the Oregon and California Railroad Company; that your intervenor at said time duly applied to said defendant, the Oregon and California Railroad Company, to purchase said land and offered to pay said company the sum of Two Dollars and Fifty Cents per acre, or Four Hundred Dollars for said quarter section of land, and at the time said application to purchase was made your intervenor duly tendered in lawful money of the United States the said Two Dollars and Fifty Cents per acre or Four Hundred Dollars for said land, and demanded a deed of conveyance therefor under the terms and conditions of said grant, which said tender and offer of your intervenor was refused and denied by said defendant, the Oregon and California Railroad Company; that at the time your intervenor made said offer to purchase said quarter section of land and ever since said time he intended to and was and is qualified, ready, able and willing and now intends to make an actual settlement upon said lands and occupy and use the same as an actual settler, and so informed the defendant, the Oregon and California Railroad Company, at the time said application for purchase and tender was so made to said company. And he herewith offers to tender into Court the said sum of Four Hundred Dollars, lawful money of the United States, to be paid and delivered to the Oregon and California Railroad Company, or to the person, persons, corporation or corporations qualified and authorized to receive the same, upon the execution and delivery to your intervenor of a good and sufficient deed of conveyance conveying to him the title to said 160 acres, or quarter section of land hereinbefore described, or upon such terms as to Your Honors may seem to be equitable and just.

That said intervenor, John Weist, did, a long time prior to the commencement of this suit, apply to the defendant, the Oregon and California Railroad Company, to purchase the following described lands and real property, to-wit: The N. W. quarter of Section 23 in Township 4 South, of Range 5 E. of the Willamette Meridian.

That said lands and real property consist of one quarter section of land and are a part of the lands described in the Acts of Congress referred to in Complainant's bill of complaint and herein, and described in the bill of complaint as being unsold lands, and in fact are lands which have not been disposed of or sold by the defendant, the Oregon and California Railroad Company; that your intervenor at said time duly applied to said defendant, the Oregon and California Railroad Company, to purchase said land and offered to pay said company the sum of Two Dollars and Fifty Cents per acre, or Four Hundred Dollars for said quarter section of land, and at the time said application to purchase was made your intervenor duly tendered in lawful money of the United States the said Two Dollars and Fifty Cents per acre or Four Hundred Dollars for said land, and demanded a deed of conveyance therefor under the terms and conditions of said grant, which said tender and offer of your intervenor was refused and denied by said defendant, the Oregon and California Railroad Company; that at the time your intervenor made said offer to purchase said quarter section of land and ever since said time he intended to and was and is qualified, ready, able and willing and now intends to make an actual settlement upon said lands and occupy and use the same as an actual settler, and so informed the defendant, the Oregon and California Railroad Company, at the time said application for purchase and tender was so made to said company. And he herewith offers to tender into Court the said sum of Four Hundred Dollars, lawful money of the United States, to be paid and delivered to the Oregon and California Railroad Company, or to the person, persons, corporation or corporations qualified and authorized to receive the same, upon the execution and delivery to your intervenor of a good and sufficient deed of conveyance conveying to him the title to said 160 acres, or quarter section of land hereinbefore described, or upon such terms as to Your Honors may seem to be equitable and just.

That said intervenor, Francis Weist, did, a long time prior to the commencement of this suit, apply to the defendant, the Oregon and California Railroad Company, to purchase the following described lands and real property, to-wit: The S. E. quarter of Section 23 in Township 4 South, of Range 5 E. of the Willamette Meridian.

That said lands and real property consist of one quarter section of land and are a part of the lands described in the Acts of Congress referred to in Complainant's bill of complaint and herein, and described in the bill of complaint as being unsold lands, and in fact are lands which have not been disposed of or sold by the defendant, the Oregon and California Railroad Company; that your intervenor at said time duly applied to said defendant, the Oregon and California Railroad Company, to purchase said land and offered to pay said company the sum of Two Dollars and Fifty Cents per acre, or Four Hundred Dollars for said quarter section of land, and at the time said application to purchase was made your intervenor duly tendered in lawful money of the United States the said Two Dollars and Fifty Cents per acre or Four Hundred Dollars for said land, and demanded a deed of conveyance therefor under the terms and conditions of said grant, which said tender and offer of your intervenor was refused and denied by said defendant, the Oregon and California Railroad Company; that at the time your intervenor made said offer to purchase said quarter section of land and ever since said time he intended to and was and is qualified, ready, able and willing and now intends to make an actual settlement upon said lands and occupy and use the same as an actual settler, and so informed the defendant, the Oregon and California Railroad Company, at the time said application for purchase and tender was so made to said company. And he herewith offers to tender into Court the said sum of Four Hundred Dollars, lawful money of the United States, to be paid and delivered to the Oregon and California Railroad Company, or to the person, persons, corporation or corporations qualified and authorized to receive the same, upon the execution and delivery to your intervenor of a good and sufficient deed of conveyance conveying to him the title to said 160 acres, or quarter section of land hereinbefore described, or upon such terms as to Your Honors may seem to be equitable and just.

That said intervenor, Geo. E. Walling, did, a long time prior to the commencement of this suit, apply to the defendant, the Oregon and California Railroad Company, to purchase the following described lands and real property, to-wit: The N. E. quarter of Section 35 in Township 4 South, of Range 5 E. of the Willamette Meridian.

That said lands and real property consist of one quarter section of land and are a part of the lands described in the Acts of Congress referred to in Complainant's bill of complaint and herein, and described in the bill of complaint as being unsold lands, and in fact are lands which have not been disposed of or sold by the defendant, the Oregon and California Railroad Company; that your intervenor at said time duly applied to said defendant, the Oregon and California Railroad Company, to purchase said land and offered to pay said company the sum of Two Dollars and Fifty Cents per acre, or Four Hundred Dollars for said quarter section of land, and at the time said application to purchase was made your intervenor duly tendered in lawful money of the United States the said Two Dollars and Fifty Cents per acre or Four Hundred Dollars for said land, and demanded a deed of conveyance therefor under the terms and conditions of said grant, which said tender and offer of your intervenor was refused and denied by said defendant, the Oregon and California Railroad Company; that at the time your intervenor made said offer to purchase said quarter section of land and ever since said time he intended to and was and is qualified, ready, able and willing and now intends to make an actual settlement upon said lands and occupy and use the same as an actual settler, and so informed the defendant, the Oregon and California Railroad Company, at the time said application for purchase and tender was so made to said company. And he herewith offers to tender into Court the said sum of Four Hundred Dollars, lawful money of the United States, to be paid and delivered to the Oregon and California Railroad Company, or to the person, persons, corporation or corporations qualified and authorized to receive the same, upon the execution and delivery to your intervenor of a good and sufficient deed of conveyance conveying to him the title to said 160 acres, or quarter section of land hereinbefore described, or upon such terms as to Your Honors may seem to be equitable and just.

That said intervenor, W. D. Sappington, did, a long time prior to the commencement of this suit, apply to the defendant, the Oregon and California Railroad Company, to purchase the following described lands and real property, to-wit: The S. W. quarter of Section 31 in Township 8 South, of Range 6 W. of the Willamette Meridian.

That said lands and real property consist of one quarter section of land and are a part of the lands described in the Acts of Congress referred to in Complainant's bill of complaint and herein, and described in the bill of complaint as being unsold lands, and in fact are lands which have not been disposed of or sold by the defendant, the Oregon and California Railroad Company; that your intervenor at said time duly applied to said defendant, the Oregon and California Railroad Company, to purchase said land and offered to pay said company the sum of Two Dollars and Fifty Cents per acre, or Four Hundred Dollars for said quarter section of land, and at the time said application to purchase was made your intervenor duly tendered in lawful money of the United States the said Two Dollars and Fifty Cents per acre or Four Hundred Dollars for said land, and demanded a deed of conveyance therefor under the terms and conditions of said grant, which said tender and offer of your intervenor was refused and denied by said defendant, the Oregon and California Railroad Company; that at the time your intervenor made said offer to purchase said quarter section of land and ever since said time he intended to and was and is qualified, ready, able and willing and now intends to make an actual settlement upon said lands and occupy and use the same as an actual settler, and so informed the defendant, the Oregon and California Railroad Company, at the time said application for purchase and tender was so made to said company. And he herewith offers to tender into Court the said sum of Four Hundred Dollars, lawful money of the United States, to be paid and delivered to the Oregon and California Railroad Company, or to the person, persons, corporation or corporations qualified and authorized to receive the same, upon the execution and delivery to your intervenor of a good and sufficient deed of conveyance conveying to him the title to said 160 acres, or quarter section of land hereinbefore described, or upon such terms as to Your Honors may seem to be equitable and just.

That said intervenor, Edward E. Stucker, did, a long time prior to the commencement of this suit, apply to the defendant, the Oregon and California Railroad Company, to purchase the following described lands and real property, to-wit: The S. ½ and N. W. ¼ of N. W. quarter of Section 31 in Township 8 South, of Range 6 W. of the Willamette Meridian.

That said lands and real property consist of one quarter section of land and are a part of the lands described in the Acts of Congress referred to in Complainant's bill of complaint and herein, and described in the bill of complaint as being unsold lands, and in fact are lands which have not been disposed of or sold by the defendant, the Oregon and California Railroad Company; that your intervenor at said time duly applied to said defendant, the Oregon and California Railroad Company, to purchase said land and offered to pay said company the sum of Two Dollars and Fifty Cents per acre, or Four Hundred Dollars for said quarter section of land, and at the time said application to purchase was made your intervenor duly tendered in lawful money of the United States the said Two Dollars and Fifty Cents per acre or Four Hundred Dollars for said land, and demanded a deed of conveyance therefor under the terms and conditions of said grant, which said tender and offer of your intervenor was refused and denied by said defendant, the Oregon and California Railroad Company; that at the time your intervenor made said offer to purchase said quarter section of land and ever since said time he intended to and was and is qualified, ready, able and willing and now intends to make an actual settlement upon said lands and occupy and use the same as an actual settler, and so informed the defendant, the Oregon and California Railroad Company, at the time said application for purchase and tender was so made to said company. And he herewith offers to tender into Court the said sum of Four Hundred Dollars, lawful money of the United States, to be paid and delivered to the Oregon and California Railroad Company, or to the person, persons, corporation or corporations qualified and authorized to receive the same, upon the execution and delivery to your intervenor of a good and sufficient deed of conveyance conveying to him the title to said 160 acres, or quarter section of land hereinbefore described, or upon such terms as to Your Honors may seem to be equitable and just.

That said intervenor, O. N. Craner, did, a long time prior to the commencement of this suit, apply to the defendant, the Oregon and California Railroad Company, to purchase the following described lands and real property, to-wit: The S. W. quarter of Section 11 in Township 5 South, of Range 4 E. of the Williamette Meridian.

That said lands and real property consist of one quarter section of land and are a part of the lands described in the Acts of Congress referred to in Complainant's bill of complaint and herein, and described in the bill of complaint as being unsold lands, and in fact are lands which have not been disposed of or sold by the defendant, the Oregon and California Railroad Company; that your intervenor at said time duly applied to said defendant, the Oregon and California Railroad Company, to purchase said land and offered to pay said company the sum of Two Dollars and Fifty Cents per acre, or Four Hundred Dollars for said quarter section of land, and at the time said application to purchase was made your intervenor duly tendered in lawful money of the United States the said Two Dollars and Fifty Cents per acre or Four Hundred Dollars for said land, and demanded a deed of conveyance therefor under the terms and conditions of said grant, which said tender and offer of your intervenor was refused and denied by said defendant, the Oregon and California Railroad Company; that at the time your intervenor made said offer to purchase said quarter section of land and ever since said time he intended to and was and is qualified, ready, able and willing and now intends to make an actual settlement upon said lands and occupy and use the same as an actual settler, and so informed the defendant, the Oregon and California Railroad Company, at the time said application for purchase and tender was so made to said company. And he herewith offers to tender into Court the said sum of Four Hundred Dollars, lawful money of the United States, to be paid and delivered to the Oregon and California Railroad Company, or to the person, persons, corporation or corporations qualified and authorized to receive the same, upon the execution and delivery to your intervenor of a good and sufficient deed of conveyance conveying to him the title to said 160 acres, or quarter section of land hereinbefore described, or upon such terms as to Your Honors may seem to be equitable and just.

Your intervenors allege that, by reason of the premises, and as hereinbefore specifically set out, each of them has an interest in the subject matter of this suit, to the extent of the parcel of land applied for by them respectively, and that under the terms of the said Acts of Congress making said grants of lands, and the conditions imposed thereby upon intending purchasers of said lands, as set out in Complainant's bill, and reaffirmed herein as being true, it was the legal duty of the Oregon and California Railroad Company to convey to your intervenors, and to each of them, the lands so applied for upon the application so made with the tender of the purchase price therefor as alleged herein; and that, as to these intervenors, and as to the lands so applied for by them, Complainant has no right to claim, nor has the Court authority to decree a forfeiture; but that it is the duty of the Complainant and the Court to enforce the terms of said grants in favor of these your intervenors.

These intervenors further allege that, each parcel, or quarter section of land so applied for by them severally, was at the date of their several applications, and now is of greater value than the sum of two thousand dollars.

XXII.

For further answer and cross-bill, your intervenors allege that, by the several Act of the Congress set out at length in Complainant's bill and admitted to be true, and re-alleged herein, it was intended by the Congress of the United States to create a trust in said land for the use and benefit of such citizens of the United States as should become actual settlers thereon and should desire and offer to purchase the same in accordance with the terms, and under the restrictions imposed by said Acts of Congress making said grants; and that, by transferring said lands to the said Oregon and California Railroad Company,—said company having accepted the terms of said grants, as shown in Complainant's bill, and herein,—Complainant constituted said Oregon and California Railroad Company the trustee of said trust, and thereafter said trustee held, and its co-defendants who claim a joint interest with, or an interest adverse thereto,—other than your intervenors and others of their class,—have held, and they and said Oregon and California Railroad Company now hold said lands, so granted, *in trust,* for the benefit of these intervenors and others of their class who, like your intervenors, are qualified under the provisions of said Acts of Congress to take said lands, and who have settled thereon and offered to purchase the same in accordance with the terms of said grants so made as aforesaid.

And your intervenors allege that, as to themselves, and others of their class, said trust is active and operative, and the terms thereof should be enforced in their favor by decree of this Honorable Court.

Wherefore, having fully answered the allegations of Complainant's bill, in so far as they are advised the same should be answered; and having fully set forth their several claims to the end that the Court may be fully advised in the premises, your intervenors pray that their several rights may be established and enforced by decree of this Honorable Court; that, defendant Oregon and California Railroad Company, by such decree, be directed and required to convey to each of your intervenors the tract of land so applied for by each as hereinbefore set forth, upon payment of the price thereof in accordance with the terms of said grants; that all such orders and decrees as the equity of their cause demands be entered in their behalf, and that each be awarded his costs and disbursements herein expended.

B. W. NUNNALLY
And Others, Intervenors.

Lewis C. Garrigus,
Solicitor for Intervenors.

STATE OF OREGON, }
District of Oregon, } ss.

I, B. W. Nunnally, being first duly sworn, upon my oath say that, I am one of the petitioners and intervenors in the foregoing petition of intervention, answer and cross-bill; that the facts therein alleged by me of my own knowledge are true; and all other allegations of said petition, answer and cross-bill not stated upon my own personal knowledge, I believe to be true.

B. W. NUNNALLY.

Subscribed and sworn to by B. W. Nunnally before me this 31st day of October, 1908.

LEWIS C. GARRIGUS,
Notary Public for Oregon.

(Endorsed) Petition, Answer and Cross-Bill of B. W. Nunnally, et al. Filed Nov. 2, 1909.

G. H. MARSH, Clerk.

And Afterwards, to wit, on the 1st day of March, 1909, there was duly filed in said Court, an order in words and figures as follows, to wit:

[ORDER PERMITTING INTERVENTION OF B. W. NUNNALLY, et al.]

[TITLE]

This case coming on to be heard upon the petition of intervention of B. W. Nunnally, and seven others, to be made parties to this suit, and to be permitted to file their answer and cross-bill therein, and, the Court having duly considered said petition of intervention, it is now ordered that the said petition, answer and cross-bill of said B. W. Nunnally, and seven other be filed, and said petitioners are permitted to intervene and become parties to this suit, and to have their alleged rights litigated and determined herein, and they are made such parties accordingly.

CHAS. E. WOLVERTON,
Judge.

(Endorsed) Order Allowing Intervention of Nunnally, et al. Filed Mar. 1, 1909.

G. H. MARSH, Clerk.
By J. W. Marsh, Deputy.

And afterwards, to wit, on the 15th day of January, 1909, there was duly filed in said Court, a Cross-Complaint in words and figures as follows, to wit:

[CROSS COMPLAINT OF JNO. L. SNYDER, et al.]

IN EQUITY No. 3340

[TITLE]

In the Circuit Court of the United States
For the District of Oregon

UNITED STATES OF AMERICA,

Complainant,

vs.

Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, (individually and as trustee), Union Trust Company (individually and as trustee), John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. Mac-

Lafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, S. Shryock, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Marvin Martin, and Roy W. Minkler,

Defendants.

CROSS-COMPLAINT OF JOHN L. SNYDER, ET AL.

To the Honorable, the Judges of the Circuit Court of the United States, for the District of Oregon:

John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, S. Shryock, each being citizens of the State of Oregon, and residing in Columbia County, in the District of Oregon, bring this their cross-complaint against the Oregon and California Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon; the Union Trust Company, a corporation organized and existing under and by virtue of the laws of the State of New York, and S. T. Gage, a citizen of the State of California, residing in the city of San Francisco, in said State, defendants in this cause, and thereupon cross-complainants for their cause of suit state;

I.

That John L. Snyder long prior to the institution of the present suit by the United States of America; to wit, on September 16, 1907, did in his own behalf, as complainant, duly institute in this Court suit No. 3184, against the Oregon and California Railroad Company, the Union Trust Company and S. T. Gage, defendants herein, in which said suit the said John L. Snyder among other things truthfully alleged that he had prior to the institution thereof, actually settled upon the Southeast quarter Section Seventeen (17), Township Four (4) North, Range three (3) West, for the bona fide purpose of making the said land his home and for the purpose of purchasing the said land from the Oregon and California Railroad Company at the price of $2.50 per acre under the Act of Congress of May 4, 1870, due tender of the purchase price being alleged in said complaint, in which said suit complainant asked for a decree against the said Oregon and California Railroad Company to compel the latter to convey said quarter section of land to him under said Act of Congress, upon the terms stipulated in said Act, and that said suit was duly prosecuted by said John L. Snyder until December 28, 1908, when this Court upon the motion of said Oregon and California Railroad Company and over the protest of said John L. Snyder by order duly entered of record stayed further proceedings in said individual suit of John L. Snyder and consolidated the same with this suit, No. 3340, granting leave to said John L. Snyder to file his joint or several cross-complaint in said suit No. 3340 on or before January 4, 1909, on which said last mentioned date by order of this Court duly entered of record, said John L. Snyder was permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Julius F. Prahl under circumstances in all respects identical on November 14, 1907, filed his individual suit in this Court No. 3215, against the same defendants for the Southwest quarter Section seventeen (17), Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Albert E. Thompson under circumstances in all respects identical on November 27, 1907, filed his individual suit in this Court, No. 3221, against the same defendants for the Southeast quarter Section twenty-seven (27) Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That James Barr under circumstances in all respects identical on November 27, 1907, filed his individual suit in this Court, No. 3222, against the same defendants for the East one-half of the North-east quarter and East one-half of the Southeast quarter, Section nine (9) Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Fred Witte under circumstances in all respects identical on December 2, 1907, filed his individual suit in this Court, No. 3223, against the same defendants for the Southwest quarter Section twenty-five (25), Township four (4) North, Range three (3) west, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant being in like manner permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That W. A. Anderson under circumstances in all respects identical on January 21, 1908, filed his individual suit in this Court, No. 3243, against the same defendants for the Southwest quarter Section five (5), Township four North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That W. H. Anderson under circumstances in all respects identical on January 21, 1908, filed his individual suit in this Court, No. 3244, against the same defendants for the Northeast quarter Section five (5), Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant being in like manner permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That O. M. Anderson under circumstances in all respects identical on January 21, 1908, filed his individual suit in this Court, No. 3245, against the same defendants for the Northwest quarter Section five (5), Township four (4) North Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That F. E. Williams under circumstances in all respects identical on January 30, 1908, filed his individual suit in this Court, No. 3254, against the same defendants for the Northwest quarter Section Twenty-one (21), Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Paul Birkenfeld under circumstances in all respects identical on January 30, 1908, filed his individual suit in this Court, No. 3255, against the same defendants for the Southeast quarter Section fifteen (15), Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant being in like manner permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That J. H. Lewis under circumstances in all respects identical on February 6, 1908, filed his individual suit in this Court, No. 3257, against the same defendants for the West one-half of the Northeast quarter and West one-half of the Southeast quarter, Section nine (9), Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, and complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Francis S. Wiser under circumstances in all respects identical on March 23, 1908, filed his individual suit in this Court, No. 3273, against the same defendants for the Northwest quarter Section twenty-seven (27), Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, and complainant in like manner being permitted to file his joint or several cross-complaint herein on on before January 18, 1909.

That W. E. Anderson under circumstances in all respects identical on March 4, 1908, filed his individual suit in this Court, No. 3261, against the same defendants for the Southeast quarter Section five (5), Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Albert Arms under circumstances in all respects identical on March 23, 1908, filed his individual suit in this Court, No. 3274, against the same defendants for the Northeast quarter Section thirty-five (35), Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Joseph A. Maxwell under circumstances in all respects identical on March 23, 1908, filed his individual suit in this Court, No. 3275, against the same defendants for the Northeast quarter Section twenty-seven (27), Township four (4) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Isaac McKay under circumstances in all respects identical on March 30, 1908, filed his individual suit in this Court, No. 3282, against the same defendants for the Southeast quarter Section twenty-one (21), Township four (4) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That J. R. Peterson under circumstances in all respects identical on May 7, 1908, filed his individual suit in this Court, No. 3306, against the same defendants for the Northeast quarter Section twenty-one (21), Township four (4) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That D. MacLafferty under circumstances in all respects identical on May 18, 1908, filed his individual suit in this Court, No. 3312, against the same defendants for the Northeast quarter Section twenty-five (25), Township four (4) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Edgar MacLafferty under circumstances in all respects identical on May 18, 1908, filed his individual suit in this Court, No. 3313, against the same defendants for the Southeast quarter Section twenty-five (25), Township four (4) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That V. V. McAboy under circumstances in all respects identical on June 1, 1908, filed his individual suit in this Court, No. 3322, against the same defendants for the Northeast quarter Section seven (7) Township four (4) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That George C. MacLafferty under circumstances in all respects identical on June 2, 1908, filed his individual suit in this Court, No. 3323, against the same defendants for the Northwest quarter Section twenty-five (25), Township four (4) North, range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That George Edgar MacLafferty under circumstances in all respects identical on June 8, 1908, filed his individual suit in this Court, No. 3326, against the same defendants for the Northeast quarter Section 1, Township three (3) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That E. L. MacLafferty under circumstances in all respects identical on June 17, 1908, filed his individual suit in this Court, No. 3329, against the same defendants for the Northwest quarter Section one (1), Township three (3) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That B. N. MacLafferty under circumstances in all respects identical on June 17, 1908, filed his individual suit in this Court, No. 3330, against the same defendants for the Southeast quarter Section one (1), Township three (3) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Enos M. Fluhrer under circumstances in all respects identical on July 15, 1908, filed his individual suit in this Court, No. 3338, against the same defendants for the Southeast quarter Section thirty-one (31), Township five (5) North, Range two (2) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That F. W. Floeter under circumstances in all respects identical on August 17, 1908, filed his individual suit in this Court, No. 3351, against the same defendants for the Northeast quarter Section nineteen (19), Township four (4) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That S. Shryock under circumstances in all respects identical on August 24, 1908, filed his individual suit in this Court, No. 3369, against the same defendants for the Southwest quarter Section twenty-one (21), Township four (4) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

II.

As a continuation of said causes aforementioned in the manner permitted by the aforesaid orders of this Court, the cross-complainants herein named in obedience to said order of Court, requiring these cross-complainants to plead over in this suit, now jointly state their cause of suit, as follows:

III.

That there was heretofore passed by the Congress of the United States, and approved by the President of the United States on May 4, 1870, an Act, duly published at pages 94 and 95 of the 16th Volume of the Statutes at Large of the United States, which said Act is a Public Law of the United States, and is entitled, and is in words and figures as follows, to wit:

"CHAP. LXIX.—An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon.

Be it enacted by the Senate and House of Representatives of the United States, in Congress assembled, That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria, and from a suitable point of junction near Forest Grove to the Yamhill River, near McMinnville in the State of Oregon, there is hereby granted to the Oregon Central Railroad Company, now engaged in constructing the said road, and to their successors and assigns the right of way through the public lands of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands materials for constructing said road, and also the necessary lands for depots, stations, side tracks, and other needful uses in operating the road, not exceeding forty acres at any one place, and also each alternate section of the public lands not mineral, excepting coal or iron lands, designated by odd numbers nearest to said road, to the amount of ten such alternate sections per mile, on each side thereof, not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of this Act. And in case the quantity of ten full sections per mile cannot be found on each side of said road within the said limits of twenty miles, other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty-five miles from the track of said road to make up such deficiency.

Sec. 2. And be it further enacted, That the Commissioner of the General Land Office shall cause the lands along the line of the said railroad to be conveyed with all convenient speed, and whenever and as often as the said company shall file with the Secretary of the Interior maps of the survey and location of twenty or more miles of said road, the Secretary shall cause the said granted lands adjacent to and coterminus with such located sections of road to be segregated from the public lands, and thereafter the remaining public lands, subject to sale within the limits of the said grant, shall be disposed of only to actual settlers at double the minimum price for such lands. And provided also, That settlers under the provisions of the homestead act who comply with the provisions of the terms of said act shall be entitled, within the said limits of twenty miles, to patents for an amount not exceeding eighty acres each of the said ungranted lands, anything in this Act to the contrary notwithstanding.

SEC. 3. And be it further enacted, That whenever and as often as the said company shall complete and equip twenty or more miles of the said railroad and telegraph, the Secretary of the Interior shall cause the same to be examined, at the expense of the company, by three commissioners appointed by him; and if they shall report that such completed section is a first class railroad and telegraph, properly equipped and ready for use, he shall cause patents to be issued to the company for so much of the said granted lands as shall be adjacent to and coterminus with the said completed sections.

Sec. 4. And be it further enacted, That the said alternate sections of land granted by this Act, excepting only such as are necessary for the company to reserve for depots, stations, side tracks, wood yards, standing ground, and other needful uses in operating the road, shall be sold by the company only to actual settlers, in quantities not exceeding one hundred and sixty acres or a quarter section to any one settler, and at a price not exceeding two dollars and fifty cents per acre.

Sec. 5. And be it further enacted, That the said company shall, by mortgage or deed of trust or two or more trustees, appropriate and set apart all the net proceeds of the sales of said granted lands, as a sinking fund, to be kept invested in the bonds of the United States, or other safe and more productive securities, for the purchase from time to time, and the redemption at maturity of the first mortgage construction bonds of the company, on the road, depots, stations, side tracks and wood yards, not exceeding thirty thousand dollars per mile, payable in gold coin not longer than thirty years from date, with interest payable semi-annually in coin not exceeding the rate of seven per centum per annum; and no part of the pricipal or interest of the said fund shall be applied to any other use until all the said bonds shall have been purchased or redeemed and cancelled; and each of the said first mortgage bonds shall bear the certificate of the trustees, setting forth the manner in which the same is secured and its payment provided for. And the District Court of the United States, concurrently with the State Courts, shall have original jurisdiction, subject to appeal and writ of error, to enforce the provisions o this section.

Sec. 6. And be it further enacted, That the sai company shall file with the Secretary of the Interio its assent to this Act within one year from the time o its passage, and the foregoing grant is upon the condition that the said company shall complete a sectio of twenty or more miles of said railroad and telegrap within two years, and the entire railroad and telegrap within six years from the same date."

IV.

That thereafter, to wit, on July 12, 1870, the Orego Central Railroad Company, designated as grantee i the foregoing Act, duly filed its assent thereto wit the Secretary of the Interior, and the said Oregon Central Railroad Company, for itself and its successors, di thereby and in that manner expressly contract and agre with the United States, among other things, that sai Oregon Central Railroad Company would sell all of th lands granted by said Act in quantities as great as an not exceeding one hundred and sixty acres, or a quarte section, to any one settler, and at a price not exceedin two dollars and fifty cents per acre, excepting only suc portions of said lands as said Oregon Central Railroa Company should necessarily require for depots, station side tracks, wood yards, standing ground and other needful uses in operating the road, and that said contract wa entered into by and between the United States and sai Oregon Central Railroad Company and its successor for the benefit of any and all citizens of the United States who should thereafter actually settle upon said lands.

V.

That immediately thereafter, and within the time limited by the terms of said Act of Congress, said Oregon Central Railroad Company did build, construct, complete and equip the railroad and telegraph line mentioned in the aforesaid Act of Congress, from Portland in a westerly direction through the Counties of Multnomah and Washington to Forest Grove, and from Forest Grove in a southwesterly direction through the Counties of Washington and Yamhill to a point on the Yamhill River at McMinnville, and thereby said Oregon Central Railroad Company and its successors did become entitled to receive, subject to the provisions of the aforesaid Act of Congress and its aforesaid contract with the United States all the lands granted by said Act of Congress lying coterminous with the line of railroad and telegraph so built, constructed, completed and equipped, and said Oregon Central Railroad Company and its successors did thereby become entitled to receive patents from the United States to said lands, subject to the provisions of said Act of Congress and said contract aforementioned.

VI.

That on October 6, 1880, and before said Oregon Central Railroad Company had received patent for any of the lands granted by said Act of Congress, defendant, the Oregon & California Railroad Company, became the successor of said Oregon Central Railroad Company, and that said defendant, the Oregon and California Railroad Company, is now the owner and holder of the legal title to all of the lands granted by the Act of Congress aforesaid, and subject to the provisions of the Act of Congress and the contract aforesaid, excepting such portions of said lands as said defendant the Oregon & California Railroad Company has sold and conveyed away. That on October 6, 1880, said Oregon Central Railroad Company, by its deed of conveyance, by it duly made, executed and delivered on said date to defendant, the Oregon & California Railroad Company, did grant, bargain and sell, transfer, convey and confirm to said defendant, the Oregon & California Railroad Company, its successors and assigns, the right of way and franchise of said Oregon Central Railroad Company, and the railroad and telegraph line of said Oregon Central Railroad Company aforesaid, from Portland to Forest Grove and from Forest Grove to McMinnville, together with the depots, stations and side tracks of said Oregon Central Railroad Company, and all the property and assets of said Oregon Central Railroad Company of every kind and character, and particularly all the lands granted to said Oregon Central Railroad Company by the Act of March 4, 1870, which said Oregon Central Railroad Company was on the date of said deed, entitled to receive, or might thereafter become entitled to receive under said Act of Congress, and that said defendant, the Oregon & California Railroad Company, received and accepted said deed of conveyance, and entered into the immediate possession of said railroad and telegraph line from Portland to Forest Grove and McMinnville, under said deed, as the successor of said Oregon Central Railroad Company, and has ever since claimed to the United States and the public at large that it is the successor of the Oregon Central Railroad Company.

VII.

That thereafter defendant the Oregon & California Railroad Company, as successors to the Oregon Central Railroad Company, and under authority of and pursuant to said Act of Congress of May 4, 1870, did file with the Commissioner of the General Land Office its various applications and selection lists at divers times for patents to the lands granted by said Act of Congress, and upon such application and selection lists, and under authority of and pursuant to said Act of Congress, the President of the United States has heretofore conveyed by patents to said defendant, the Oregon & California Railroad Company, about five hundred thousand acres of land granted by said Act of Congress under authority of and pursuant to said Act of Congress, and subject to the provisions of said Act, and among the lands granted by patent to said defendant, the Oregon & California Railroad Company upon its applications and selection lists aforesaid, under and subject to the provisions of the Act of Congress aforesaid, were the lands heretofore described in Paragraph I of this cross-complaint, which said lands are involved in this suit, and were conveyed to said defendant, the Oregon & California Railroad Company by the United States by patents upon the selection lists of said defendant company, and under and pursuant to said Act of Congress of May 4, 1870, and subject to all the terms and provisions of said Act. That said defendant, the Oregon & California Railroad Company, has not heretofore sold nor conveyed away said lands heretofore described in Paragraph I of this cross-complaint, but is now the owner and holder of the legal title thereto, subject to the aforesaid Act of Congress.

VIII.

That Congress, by said Act of May 4, 1870, intended to and did grant to said Oregon Central Railroad Company, its successors and assigns, the right of way for said railroad and telegraph line through the public lands of the width of one hundred feet on each side of said road, and also the necessary lands for depots, stations, side tracks and other needful uses in operating said road, not exceeding forty acres in any one place, and also each alternate section of the public non-mineral lands, excepting coal or iron lands, designated by odd numbers nearest to said road, to the amount of ten alternate sections per mile on each side thereof, not otherwise disposed of or reserved or held by valid pre-emption or homestead rights at the date of the passage of said Act, and the right, in case the quantity of ten full sections per mile could not be found on each side of said road within the said limits of twenty miles, to select and receive other lands designated as aforesaid under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty-five miles from the track of said road, to make up such deficiency, and subject to the provisions hereinafter stated. That Congress intended to and did, by said Act of May 4, 1870, provide that the said alternate sections of land granted by said Act, excepting only such as were necessary for said company to reserve for depots, stations, side tracks, wood yards, standing ground and other needful uses in operating said road, should be sold by said company only to actual settlers, in quantities as great as and not exceeding one hundred sixty acres or a quarter section to any one settler, and at a price not exceeding two dollars and fifty cents per acre, and that said company should file with the Secretary of the Interior its assent to said Act within one year from the time of its passage.

IX.

That Congress, by said Act of May 4, 1870, intended to and did grant to said Oregon Central Railroad Company, and to its successors and assigns, and to its successor, defendant, the Oregon & California Railroad Company, a limited beneficial interest in the lands designated in said Act, and that Congress by said Act intended to and did stipulate and provide that the right of citizens of the United States to enter and settle upon said lands, to the extent of one hundred and sixty acres or a quarter section to each citizen so desiring to enter and settle upon said lands, and to purchase the same from the railroad company at a price not to exceed two dollars and fifty cents per acre, should be reserved to the citizens of the United States. That Congress, by said Act of May 4, 1870, intended to and did provide and stipulate that the odd numbered sections granted by said Act to said railroad company should continue open to entry and settlement by citizens of the United States without let or hindrance from said railroad company, in quantities as great as and not exceeding one hundred sixty acres or a quarter section to any one citizen, as freely as though said Act had not been passed at all, but that Congress, by said Act, did stipulate that the sale price of the lands within the limits of said grant, both even and odd numbered sections, should thereafter be two dollars and fifty cents per acre, that is, that the sale price of the even numbered sections retained by the Government should thereafter be two dollars and fifty cents per acre, and that the sale price of the odd numbered sections granted to said railroad company should thereafter not exceed two dollars and fifty cents per acre. That Congress, by said Act of May 4, 1870, intended to and did make and constitute said Oregon Central Railroad Company, and its successor, defendant, the Oregon & California Railroad Company, a mere intermediary trustee, through which Congress intended to and did by said Act provide for the conveyance of the legal title to the odd numbered sections of lands granted by said Act from the United States Government to such citizens of the United States as might thereafter settle upon such lands. That

Congress by said Act did not intend to grant to said railroad company any possessory right to any of said lands, except those particular portions designated for a right of way, depots, stations, side tracks, wood yards, standing ground, and other needful uses in operating the road, but that Congress by said Act reserved the right to citizens of the United States to enter upon and take possession of all said lands with the exceptions last aforementioned, and to purchase the same from said railroad company upon becoming actual settlers upon said land, and that Congress intended to and did, by said Act of May 4, 1870, accomplish a double purpose, to wit: First, Congress intended to and did, by said Act, provide financial aid to said railroad company in the construction of said railroad and telegraph line, by providing that the odd numbered sections aforementioned should be conveyed by the United States to said railroad company in trust, for the sole purpose of being hereafter conveyed by said railroad company to actual settlers, and for no other purpose, with the provisions that said railroad company should have the right to receive the proceeds of the disposition of all of said lands, and that said lands should be disposed of at not exceeding two dollars and fifty cents per acre; Second, Congress intended to and did by said Act provide that its then declared policy of disposing of the public lands to citizens of the United States in small tracts, and at prices not exceeding two dollars and fifty cents per acre, should not be interfered with or abridged by the grant of such aid to said railroad company, but that such policy of the Government should continue as free and uninterrupted as though such aid had not been granted by said Act to said railroad company, and this latter purpose was the paramount object of the grant. That Congress, by said Act of May 4, 1870, reposed a special trust and confidence in said Oregon Central Railroad Company and its successors to carry out the expressed and declared policy and theory of said Act, and to convey said lands at a price not exceeding two dollars and fifty cents per acre, to all such citizens of the United States as might thereafter settle upon the same, in quantities not exceeding one hundred and sixty acres or a quarter section to any one settler, and that therefore, defendant, the Oregon & California Railroad Company, successor to said Oregon Central Railroad Company, as to all lands now held by it under said Act of Congress, except such as are necessary for right of way, side tracks, stations, depots, standing ground, wood yards, and other needful uses in operating the road, is a trustee for the United States, and for all such citizens of the United States as may be now actually settled upon any of the lands, under and pursuant to said Act of Congress, who have tendered to said railroad company the maximum sum per acre which it is entitled to receive, to wit: Two dollars and fifty cents per acre, and that it is now the legal duty of defendant, the Oregon and California Railroad Company, to convey by good and sufficient deeds to all such settlers the lands by them settled upon.

X.

That cross-complainant, John L. Snyder, prior to September 16, 1907, entered into possession of and settled upon the SE¼ Section 17, Township 4 North, Range 3 West, containing 160 acres; and Julius F. Prahl, cross-complainant herein, prior to November 14, 1907, entered into possession of and settled upon the SW¼ Section 17, Township 4 North, Range 3 West, containing 160 acres; and Albert E. Thompson, cross-complainant herein, prior to November 27, 1907, entered into possession of and settled upon the SE¼ Section 27, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, James Barr, prior to November 27, 1907, entered into possession of and settled upon the E½ of NE¼ and E½ of SE¼, Section 9, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, Fred Witte, prior to December 2, 1907, entered into possession of and settled upon the SW¼ Section 25, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant W. A. Anderson, prior to January 21, 1908, entered into possession of and settled upon the SW¼ Section 5, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, W. H. Anderson, prior to January 21, 1908, entered into possession and settled upon the NE ¼ Section 5, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, O. M. Anderson, prior to January 21, 1908, entered into possession of and settled upon the NW ¼ Section 5, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, F. E. Williams, prior to January 30, 1908, entered into possession of and settled upon the NW¼ Section 21, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, Paul Birkenfeld, prior to January 30, 1908, entered into possession of and settled upon the SE¼ Section 15, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, J. H. Lewis, prior to February 6, 1908, entered into possession of and settled upon the W½ of NE¼ and W½ of SE¼, Section 9, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, Francis S. Wiser, prior to March 23, 1908, entered into possession and settled upon the NW¼ Section 27, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, W. E. Anderson, prior to March 4, 1908, entered into possession of and settled upon the SE¼ Section 5, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, Albert Arms, prior to March 28, 1908, entered into possession of and settled upon the NE¼ Section 35, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, Joseph A. Maxwell, prior to March 23, 1908, entered into possession of and setted upon the NE¼ Section 27, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, Isaac McKay, prior to March 30, 1908, entered into possession of and settled upon the SE¼ Section 21, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, J. R. Peterson, prior to May 7, 1908, entered into possession of and settled upon the NE¼ Section 21, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, D. MacLafferty, prior to May 18, 1908, entered into possession of and settled upon the NE¼ Section 25, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, Edgar MacLafferty, prior to May 18, 1908, entered into possession of and settled upon the SE¼ Section 25, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, V. V. McAboy, prior to June 1, 1908, entered into possession of and settled upon the NE¼ Section 7, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, George C. MacLafferty, prior to June 2, 1908, entered into possession of and settled upon the NW¼ Section 25, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, George Edgar MacLafferty, prior to June 8, 1908, entered into possession of and settled upon the NE¼ Section 1 Township 3 North, range 3 West containing 160 acres; and cross-complainant, E. L. MacLafferty, prior to June 17, 1908, entered into possession of and settled upon the NW¼ Section 1, Township 3 North, Range 3 West, containing 160 acres; and cross-complainant, B. N. MacLafferty, prior to June 17, 1908, entered into possession of and settled upon the SE¼ Section 1, Township 3 North, Range 3 West, containing 160 acres; and cross-complainant, Enos M. Fluhrer, prior to July 15, 1908, entered into possession of and settled upon the SE¼ Section 21, Township 5 North, Range 2 West, containing 160 acres;

and cross-complainant, F. W. Floeter, prior to August 17, 1908, entered into possession of and settled upon the NE¼ Section 19, Township 4 North, Range 3 West, containing 160 acres; and cross complainant, S. Shryock, prior to August 24, 1908, entered into possession of and settled upon the SW ¼ Section 21, Township 4 North, Range 3 West, containing 160 acres, and all of the above mentioned entries made by said cross-complainants are on lands in Columbia County, Oregon, and said entries and settlements thereon were made under and pursuant to said Act of Congress of May 4, 1870, and by virtue of the right given to cross-complainants so to do by said Act of Congress. That from the date of said settlements down to the present time cross-complainants have remained in possession of and occupied and inhabited the said lands above described as their homes, to the exclusion of homes elsewhere, and that it is their bona fide purpose and intention to make said quarter sections of land their homes for the future, and to improve, clear, husband and cultivate the same. That immediately after settling upon said quarter sections of land as aforesaid, cross-complainants erected their dwelling houses thereon, in which they have resided at all times since and are now residing. That prior to the filing of cross-complainants individual suits, heretofore mentioned in Paragraph I of this cross-complaint, cross-complainants each offered to defendant, the Oregon and California Railroad Company, their applications to purchase said quarter sections of land, and each tendered the sum of four hundred dollars in United States gold coin, and each tendered and offered to reimburse defendant for all taxes and disbursements paid out by defendant on account of said lands, in payment for said quarter sections of land, that being two dollars and fifty cents per acre therefor, which said applications the defendant, the Oregon and California Railroad Company, then and there denied and refused, and continues to deny and refuse, and which said tender and offer of four hundred dollars in United States gold coin, for each quarter section, and taxes and disbursements, in payment for said lands, the defendant, the Oregon and California Railroad Company, then and there rejected and refused, and still refuses. That these cross-complainants are, and were at the time of filing their individual suits, heretofore mentioned in Paragraph I of this cross-complaint, citizens of the United States.

XI.

That said quarter sections of land above described are situated in Columbia County, Oregon, about fifteen miles from the railroad and telegraph line that was constructed by the aforesaid Oregon Central Railroad Company, under and pursuant to said Act of Congress of May 4, 1870, that the same are non-mineral, and that none of said quarter sections of land or any part thereof were or are necessary for depots, stations, side tracks, wood yards, or other needful uses in operating the road.

XII.

That defendant, the Oregon & California Railroad Company, denies that it holds said quarter sections of land last described as a trustee for cross-complainants, or that it is bound or obliged by said Act of May 4, 1870, and by the facts pleaded in this cross-complaint, to convey said quarter sections of land to these cross-complainants. That said defendant has repudiated the trust created and reposed in it by said Act of Congress of May 4, 1870, and now denies that it holds said quarter sections of land last described in trust for the United States and for these cross-complainants, and in disregard of its plain duty and obligation and as trustee under said Act of Congress, and under the facts pleaded herein, refuses to accept from cross-complainants herein the sum of two dollars and fifty cents per acre for said lands, or to convey said lands to said cross-complainants, but that said defendant, the Oregon & California Railroad Company, on the contrary, in violation of the trust aforesaid, now asserts a claim of ownership of the absolute fee-simple title to said lands.

XIII.

That said defendant, the Oregon & California Railroad Company, does not deny that its source of title to all of the lands herein referred to as being granted to it, is the Act of May 4, 1870, but that said defendant attempts to justify its present assertion of the absolute ownership of said lands by the claim that it has now held said lands for thirty-seven years and that it has paid

rge sums in taxes on said lands, and that it at one
ne was willing and anxious to sell said lands for the
ices limited by said Act of Congress, and that no per-
ns then applied to buy. Said defendant therefore
iims that it would be unjust and inequitable to now
quire it to sell said lands to actual settlers for the price
d sum of two dollars and fifty cents per acre, and
id defendant further asserts that cross-complainants
e barred from a recovery by reason of their alleged
:hes in not sooner asserting their claim, and by reason
the alleged thirty-seven years' adverse possession of
d defendant and its grantors. But your cross-com-
ainants state that in truth and in fact all of the land
ceived by said defendant under said Act of Congress
s been patented to defendant during the past twelve
ars, and that the first patent ever issued to said defend-
t under said act of Congress for any of said land is
ted October 9, 1895. Your cross-complainants further
ite that in truth and in fact said defendant has not paid
xes on said lands to an amount in excess of fifty cents
r acre, and that said defendant has never made any
provements on said lands. Your cross-complainants
rther state that said defendant has never at any time
en willing to comply with the terms of said Act of
ongress of May 4, 1870, by conveying said lands to
tual settlers in quantities not exceeding one hundred
d sixty acres at prices not exceeding two dollars and
ty cents per acre. Your cross-complainants further
ite that said defendant has received by patent up to
s time under said Act of Congress a total of 128,616.13

acres, of which it has sold to the firm of Hammond & Winton, the Olean Land Company, and others, approximately 49,358.26 acres for the average price of approximately $7.00 per acre, and in tracts of thousands of acres to single purchasers, and that from such sales said defendant has received a sum far in excess of two dollars and fifty cents per acre for the entire lands patented to it, and all taxes and disbursements paid out by said defendant on account of said lands. Your cross-complainants therefore allege that said defendant has already received, for the sold portions of said lands patented to it, a sum far in excess of the total amount it was entitled to receive for all of the lands so patented to it and that it would not be unjust or inequitable to require said defendant to now comply with the terms of said law by disposing of all of the balance of said lands as required by said Act of May 4, 1870.

XIV.

Your cross-complainants state that they are each now willing to pay in Court for defendant, and hereby each tenders into Court for defendant, the Oregon and California Railroad Company, the sum of four hundred dollars, in United States gold coin, for each quarter section of the lands above described, as the purchase price for said quarter sections of land so settled upon, and now occupied by your cross-complainants as aforesaid, and your cross-complainants also stand ready and willing to pay into Court for defendant all disbursements heretofore expended by defendant in connection with said lands for taxes or otherwise, if the same shall be claimed by defendant and ascertained and deemed a just and equitable charge in favor of defendant by this Honorable Court.

XV.

Your cross-complainants further allege that defendant, the Oregon & California Railroad Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon; and that defendant, the Union Trust Company, is a corporation organized and existing under and by virtue of the laws of the State of New York.

XVI.

WHEREFORE, Your cross-complainants pray that the said defendant, Oregon & California Railroad Company be declared and adjudged by decree of this Court to hold the legal title to the following quarter sections of land, which your cross-complainants respectively entered into possession of and settled upon prior to the filing of their individual suits hereinbefore mentioned:

John L. Snyder, SE¼ Sec. 17, Tp. 4 North, Range 3 West; Julius F. Prahl, SW¼ Sec. 17, Tp. 4 North, Range 3 West; Albert E. Thompson, SE¼ Sec. 27, Tp. 4 North, Range 3 West; James Barr, E½ of NE¼ and E ½ of SE ¼, Sec. 9, Tp. 4 North, Range 3 West; Fred Witte, SW¼ Sec. 25, Tp. 4 North, Range 3 West; W. A. Anderson, SW¼ Sec. 5, Tp. 4 North, Range 3 West; W. H. Anderson, SW¼ Sec. 5, Tp.

4 North, Range 3 West; O. M. Anderson, NW¼ Sec. 5, Tp. 4 North, Range 3 West; F. E. Williams, NW¼ Sec. 21, Tp. 4 North, Range 3 West; Paul Birkenfeld, SE¼ Sec. 15, Tp. 4 North, Range 3 West; J. H. Lewis, W½ or NE¼ and W½ of SE ¼, Sec. 9, Tp. 4 North, Range 3 West; Francis S. Wiser, NW¼ Sec. 27, Tp. 4 North, Range 3 West; W. E. Anderson, SE¼ Sec. 5, Tp. 4 North, Range 3 West; Albert Arms, NE¼ Sec. 35, Tp. 4 North, Range 3 West; Joseph A. Maxwell, NE¼ Sec. 27, Tp. 4 North, Range 3 West; Isaac McKay, SE¼ Sec. 21, Tp. 4 North, Range 3 West; J. R. Peterson, NE¼ Sec. 21, Tp. 4 North, Range 3 West, D. MacLafferty, NE¼ Sec. 25, Tp. 4 North, Range 3 West; Edgar MacLafferty, SE¼ Sec. 25, Tp. 4 North, Range 3 West; V. V. McAboy, NE¼ Sec. 7, Tp. 4 North, Range 3 West; George C. MacLafferty, NW¼ Sec. 25. Tp. 4 North, Range 3 West; George Edgar MacLafferty, NE¼ Sec. 1, Tp. 3 North, Range 3 West; E. L. MacLafferty, NW¼, Sec. 1, Tp. 3 North, Range 3 West; B. N. MacLafferty, SE¼ Sec. 1, Tp. 3 North, Range 3 West; Enoch M. Fluhrer, SE¼ Sec. 31, Tp. 5 North, Range 2 West; F. W. Floeter, NE¼ Sec. 19, Tp. 4 North, Range 3 West; S. Shryock, SW¼ Sec. 21, Tp. 4 North, Range 3 West.

And your cross-complainants further pray that defendant, the Oregon & California Railroad Company, be declared and adjudged by decree of this Court to hold the legal title to said above described lands, with power in trust to convey said lands to your cross-complainants, and that said defendant be compelled by decree and order of this Court to accept the said sums of money above named as the purchase price for the said above described quarter sections of land and to execute said power in trust, and to convey, make and execute to your cross-complainants good and sufficient deeds to said quarter sections of land above described, or that such decree stand in place and stead of such conveyance, and for such other and further orders, judgments and decrees as may be just and proper.

XVII.

Cross-complainants further allege that they are informed and verily believe that defendant, the Union Trust Company, and defendant S. T. Gage, claim some interest in the lands involved in this suit, the nature and extent of which is unknown to your cross-complainants, and cross-complainants therefore ask that said Union Trust Company and S. T. Gage be required to answer this cros-complaint, setting up their interest, if any they have.

XVIII.

Cross-complainants having been made defendants by the United States of America in its Bill of Complaint in this suit No. 3340, state that they admit each and every allegation of fact in said Bill of Complaint of the United States of America contained except the claim of the United States of America, that the lands sued for by these cross-complainants are, or ever, can be forfeited to said United States of America, and there being no issue of fact between the United States of America and these cross-complainants, the latter for the sake of convenience and brevity of the record, pray that this paragraph of their cross-complaint shall be deemed and accepted a sufficient answer by them to the Bill of Complaint of the United States of America herein.

A. W. LAFFERTY,
Solicitor for Cross-Complainants.

(Endorsed) Cross-Complaint of Jno. L. Snyder et al.

Filed Jan. 15, 1909.

G. H. MARSH,
Clerk.

And afterwards, to wit, on the 7th day of December, 1908, there was duly filed in said Court, a Demurrer in words and figures as follows, to wit:

[DEMURRER OF O. & C. R. R. et al., TO BILL OF COMPLAINT]

[TITLE]

The Joint and Several Demurrer of the defendants Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage individually and as Trustee, to the complainant's bill of complaint herein.

These defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage individually and as trustee, jointly and severally, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner or form as the same are therein set forth and alleged, demur thereto and to the whole thereof; and for cause of demurrer to said bill, and the whole thereof, show:

First.—As against these defendants, and each of them, the said bill is

(*a*) Without equity, and cannot be maintained, as to the "East Side Grant," so-called in said bill, and subject thereof; and is

(*b*) Without equity, and cannot be maintained, as to the "West Side Grant," so-called in said bill, and subject thereof; and is (*c*) Without any equity whatsoever.

Second.—As against these defendants, and each of them, the said bill does not set forth or show any matter, equity, or cause, entitling complainant to

(*a*) Any discovery as to the "East Side Grant," so-called in said bill, and subject thereof, nor as to any facts, particulars, transactions, matters or things about, relating to, or concerning the said "East Side Grant"; nor to

(*b*) Any discovery as to the "West Side Grant," so-called in said bill, and subject thereof, nor as to any facts, particulars, transactions, matters or things about, openly relating to, or concerning the said "West Side Grant"; nor to

(*c*) Any discovery whatsoever.

Third.—As against these defendants, and each of them, the said bill does not set forth or show any matter, equity or cause, entitling complainant to

(*a*) Any relief as to the "East Side Grant," so-called in said bill, and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill set forth or shown about, relating to, or concerning the said "East Side Grant," nor to

(*b*) Any relief as to the "West Side Grant," so-called in said bill, and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill set forth or shown about, relating to, or concerning the said "West Side Grant"; nor to (*c*) The decree asked for in the "First" subdivision, paragraph "(1)" of the prayer to said bill, declaring or adjudging forfeiture of all or any of the lands or estates in lands in said paragraph described or referred to; nor to

(*d*) The decree quieting title asked for in the "First" subdivision, paragraph "(1)" of the prayer to said bill, as to all or any of the lands or estates in lands in said paragraph described or referred to; nor to

(*e*) The decree or order asked for in the "First" subdivision, paragraph "(1)" of the prayer to said bill, requiring these defendants or any of them to surrender unto complainant possession, or control, of any lands or estates in lands in said paragraph described or referred to; nor to

(*f*) The decree or order asked for in the "First" subdivision, paragraph "(2)" of the prayer to said bill, appointing a receiver or receivers, or investing such or any receiver or receivers with title or possession of all or any lands described or referred to in said subdivision "(2)," or authorizing or directing such or any receiver or receivers to do or perform any of the acts or things in said subdivision "(2)" set forth or suggested; nor to

(*g*) The, or any, injunction asked for in the "First" subdivision, paragraph "(3)" of the prayer to said bill, requiring these defendants or any of them, to do or perform any of the acts or things in said subdivision "(3)" set forth or suggested; nor to (*h*) The, or any, injunction or restraining order or decree asked for in the "Second" subdivision of the prayer to said bill; nor to

(*i*) The, or any, decree or order asked for in the "Third" subdivision of the prayer to said bill, directing or requiring these defendants, or any of them, to account, pay over, or do or perform any of the acts or things set forth or suggested in the said "Third" subdivision; nor to

(*j*) The, or any, injunction or restraining order asked for or suggested in the "Fifth" subdivision of the prayer to said bill: nor to

(*k*) Any relief whatsoever.

Wherefore these defendants, jointly and severally pray the judgment of this Honorable Court whether they, or either of them, shall be compelled to make any further or other answer to the said bill, or to any of the matters and things therein contained, and pray to be hence dismissed, with their and each of their reasonable costs in this behalf sustained.

PETER F. DUNNE,
WM. D. FENTON, and
WM. SINGER, Jr.,
Attorneys for the said Defendants.

WM. F. HERRIN,
Counsel for the said Defendants.

STATE OF OREGON,
County of Multnomah, } ss.

J. P. O'Brien makes solemn oath and says: That he is Vice-President of the Oregon & California Railroad Company, named as one of the defendants in the foregoing joint and several demurrer; and that the said demurrer is not interposed for delay.

J. P. O'BRIEN.

Subscribed and sworn to before me on December 4th, 1908.

W. H. GUILD,
Notary Public in and for the County of Multnomah, State of Oregon.

(Seal)

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

WM. F. HERRIN,
PETER F. DUNNE,
WM. D. FENTON, and
WM. SINGER, Jr.,
Counsel and Attorneys for said Defendants.

(Endorsed)

Joint and Several Demurrer of Defendants O. & C. R. R. et al., to Bill of Complaint.

Filed Dec. 7, 1908.

G. H. MARSH,
Clerk.

And afterwards, to wit, on the 1st day of March, 1909, there was duly filed in said Court, a Demurrer in words and figures as follows, to wit:

[DEMURRER OF UNION TRUST COMPANY TO CROSS-BILL OF JNO. L. SNYDER, et al.]

The demurrer of the defendant Union Trust Company to the document filed herein on January 15th, 1909, under the heading of and purporting to be the "Cross-Complaint of John L. Snyder, et al."

This defendant, Union Trust Company, by protestation, not confessing or acknowledging all or any of the matters and things in the said document to be true in such manner or form as the same are therein set forth and alleged, demur thereto and to the whole thereof; and for cause of demurrer show:

I.

First.—That the said document fails to show that the matter in dispute therein sought, purporting or intended to be presented on behalf of said John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock, or either or any of them, exceeds exclusive of interest and costs the sum or value of two thousand dollars.

Second.—That the said document fails to show any matter, equity or cause entitling the said John L. Snyder, or either of said defendants above named, or any of them to file or maintain the same.

Third.—That the said document fails to show any matter, equity or cause entitling the said John L. Snyder, or either of said defendants above named, or any of them, to any discovery whatsoever.

Fourth.—That the said document fails to show any matter, equity, or cause entitling the said John L. Snyder, or either of the defendants above named, or any of them, to any relief whatsoever.

II.

And this defendant demurs to so much of said document as precedes, and is exclusive of, subdivision "XVIII" thereof, for each and all the causes of demurrer to the whole document hereinbefore set forth, in the same words and figures as hereinbefore separately, and respectively, stated.

III.

And this defendant demurs to subdivision "XVIII" of the said document, for each and all of the causes of demurrer hereinbefore set forth to the whole document, in the same words and figures as hereinbefore separately, and respectively, stated.

Wherefore this defendant prays the judgment of this Honorable Court whether it shall make any further or other answer to the said document, or to any part thereof, or to any matters and things therein contained; and pray to be hence dismissed with its reasonable costs in this behalf sustained.

DOLPH, MALLORY, SIMON AND GEARIN,
Attorneys for said Defendant.

JOHN GEARIN,
Counsel for the said Defendant.

STATE OF OREGON, }
County of Multnomah. } ss.

John M. Gearin makes solemn oath and says: That he is the attorney for the Union Trust Company, one of the defendants in the above entitled suit; that the foregoing demurrer is not interposed for delay, and is true in point of fact. That he makes this verification because said Union Trust Company is a resident of the State of New York and no officer of said Company is now present or residing in the State of Oregon.

JNO. M. GEARIN.

Subscribed and sworn to before me this 27th day of February, A. D. 1909.

B. B. McCARTHY,
(Seal) Notary Public for Oregon.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

DOLPH, MALLORY, SIMON & GEARIN,
Counsel for the said Defendant.

(Endorsed) Demurrer to Bill of Intervention of Jno. L. Snyder et al.

Filed March 1, 1909.

G. H. MARSH,
Clerk.

And afterwards, to-wit, on the 7th day of April, 1909, there was duly filed in said Court, a demurrer in words and figures as follows, to-wit:

[DEMURRER OF O. & C. R. R. et al., TO PETITION OF B. W. NUNNALLY, et al.]

[TITLE]

The joint and several demurrer of the defendants Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage individually and as Trustee, to the document filed herein on or about March 1st, 1909, purporting to be the Petition, Answer and Cross-Bill of B. W. Nunnally and seven other persons.

These defendants, Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as Trustee, jointly and severally, by protestation, not confessing or acknowledging all or any of the matters and things in the said document to be true in such manner or form as the same are therein set forth and alleged, demur thereto and to the whole thereof; and for cause of demurrer show:

1st. That the said document fails to show that the matter in dispute therein sought, purporting or intended to be presented on behalf of B. W. Nunnally, or any person or persons therein named as an intervenor or as intervenors, exceeds exclusive of interest and costs the sum or value of two thousand dollars.

2nd. That the said document fails to show any matter, equity or cause entitling the said B. W. Nunnally, or any person or persons therein named as an intervenor or as intervenors, to file or maintain the same.

3rd. That the said document fails to show any matter ,equity or cause entitling the said B. W. Nunnally, or any person or persons therein named as an intervenor or as intervenors, to any discovery whatsoever.

4th. That the said document fails to show any matter, equity, or cause entitling the said B. W. Nunnally, or any person or persons therein named as an intervenor or as intervenors, to any relief whatsoever.

Wherefore, these defendants, jointly and severally, pray the judgment of this Honorable Court whether they, or either of them, shall make any further or other answer to the said document, or to any part thereof, or to any matters and things therein contained, and pray to be hence dismissed with their, and each of their, reasonable costs in this behalf sustained.

PETER F. DUNNE,
WM. D. FENTON,
WM. SINGER, JR.,
Attorneys for said Defendants.

WM. F. HERRIN,
Counsel for the said Defendants.

STATE OF OREGON, }
County of Multnomah, } ss.

W. W. Cotton makes solemn oath and says: That he is Secretary of the Oregon & California Railroad Company, named as one of the defendants in the foregoing joint and several demurrer; and that the said demurrer is not interposed for delay.

Subscribed and sworn to before me on April 6th, 1909.
BLANCHE LUCKEY,
Notary Public in and for the County of Multnomah, State of Oregon.
(SEAL)
} W. W. Cotton

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

WM. F. HERRIN,
PETER F. DUNNE,
WM. D. FENTON,
WM. SINGER, JR.,
Counsel and Attorneys for said Defendants.

(Endorsed) Demurrer of defendants O. & C. R. R. et al., to petition of B. W. Nunnally, et al.

Filed April 7, 1909.

G. H. MARSH,
Clerk.

And afterwards, to-wit, on the 18th day of February, 1909, there was duly filed in said Court, a demurrer in words and figures as follows, to-wit:

[DEMURRER OF O. & C. R. R. et al., TO CROSS COMPLAINT OF JNO. L. SNYDER, et al.]

[TITLE]

The joint and several demurrer of the defendants Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage individually and as Trustee, to the document filed herein on January 15th, 1909, under heading of and purporting to be the "Cross-Complaint of John L. Snyder, et al."

These defendants, Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as Trustee, jointly and severally, by protestation, not confessing or acknowledging all or any of the matters and things in the said document to be true in such manner or form as the same are therein set forth and alleged, demur thereto and to the whole thereof; and for cause of demurrer show:

I.

1st. That the said document fails to show that the matter in dispute therein sought, purporting or intended to be presented on behalf of the said John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witt, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H.

Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Loeter and S. Shryock, or either or any of them, exceeds exclusive of interest and cost the sum or value of two thousand dollars.

2nd. That the said document fails to show any matter, equity, or cause entitling the said John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter and S. Shryock, or either or any of them, to file or maintain the same.

3rd. That the said document fails to show any matter, equity or cause entitling the said John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar Mac-

Lafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter and S. Shryock, or either or any of them, to any discovery whatsoever.

4th. That the said document fails to show any matter, equity, or cause entitling the said John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter and S. Shryock, or either or any of them, to any relief whatsoever.

II.

And these defendants, jointly and severally, demur to so much of the said document as precedes, and is exclusive of, subdivision "XVIII" thereof, for each and all of the causes of demurrer to the whole document hereinbefore set forth, in the same words and figures as hereinbefore separately, and respectively, stated.

III.

And these defendants, jointly and severally, demur to subdivision "XVIII" of the said document, for each and all of the causes of demurrer hereinbefore set forth to the whole document, in the same words and figures as hereinbefore separately, and respectively, stated.

Wherefore these defendants, jointly and severally, pray the judgment of this Honorable Court whether they, or either of them, shall make any further or other answer to the said document, or to any part thereof, or to any matters and things therein contained; and pray to be hence dismissed with their, and each of their, reasonable costs in this behalf sustained.

PETER F. DUNNE,
WM. D. FENTON,
WM. SINGER, JR.,
Attorneys for the said Defendants.

WM. F. HERRIN,
Counsel for the said Defendants.

STATE OF OREGON, }
County of Multnomah, } ss.

W. W. Cotton makes solemn oath and says: That he is Secretary of the Oregon & California Railroad Company, named as one of the defendants in the foregoing joint and several demurrer; and that the said demurrer is not interposed for delay.

W. W. COTTON.

Subscribed and sworn to before me on February 12th, 1909.

BLANCHE LUCKEY,
Notary Public in and for the County of Multnomah,
State of Oregon.

(Seal)

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

WM. F. HERRIN,
PETER F. DUNNE,
WM. D. FENTON,
WM. SINGER, JR.,
Counsel and Attorney for said Defendants.

(Endorsed) Demurrer of Defendants O. & C. R. R. et al. to Cross Complaint of Jno. L. Snyder, et al.

Filed February 13, 1909.

G. H. MARSH,
Clerk.

And afterwards, to-wit, on Saturday, the 13th day of March, 1909, the same being the 136th judicial day of the regular October, 1908, term of said Court; present: the Honorable Chas. E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[ORDER SUBMITTING ALL DEMURRERS]

[TITLE]

Now, at this day, come the parties hereto by their counsel as of yesterday; whereupon, this cause comes on to be further heard upon the demurrers of the defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage to the Bill of Complaint and the several cross-bills and interventions herein; Whereupon, the Court having heard the arguments of Mr. B. D. Townsend and Mr. Tracy C. Becker, Special Assistants to the Attorney-General of the United States, for the plaintiff, of Mr. William D. Fenton and Mr. Peter F. Dunne, of counsel for the defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage, and of Mr. A. W. Lafferty and Mr. William H. Flett, of counsel for the cross-complainants and intervenors herein, will advise thereof.

And afterwards, to-wit, on Monday, the 24th day of April, 1911, the same being the 13th judicial day of the regular April, 1911, term of said Court; present: the Honorable Chas. E. Wolverton, United States District

Judge presiding, the following proceedings were had in said cause, to-wit:

[ORDER OVERRULING DEMURRER TO BILL OF COMPLAINT AND SUSTAINING DEMURRERS TO BILLS OF INTERVENTION]

[TITLE]

This cause was heard upon the demurrer of the defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage to the Bill of Complaint herein, and upon the demurrers of the said defendants to the several cross bills and interventions filed herein, and was argued by Mr. Tracey C. Becker and Mr. B. D. Townsend, Special Assistants to the Attorney-General of the United States, for the plaintiff, and by Mr. William Singer, Jr., Mr. Peter F. Dunne and Mr. William D. Fenton, of counsel for the said defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage, and by Mr. A. W. Lafferty, Mr. William H. Flett and Mr. John Mills Day, of counsel for the said cross-complainants and intervenors.

On consideration whereof, it is now ordered and adjudged that the said demurrer to the Bill of Complaint herein be, and the same is hereby, overruled; that each of the demurrers filed by said defendants to the cross-bills and interventions herein be, and the same is hereby, sustained.

Whereupon, on motion of said defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage, appearing by Mr. William D. Fenton, of counsel, it is ordered that said defendants be, and there are hereby, allowed ninety days from this date within which to take further proceedings herein.

And on motion of the defendant, Union Trust Company, appearing by Mr. John M. Gearin, of counsel, it is ordered that said defendant Union Trust Company be, and it is hereby, allowed thirty days after the expiration of the time allowed said defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage, within which to take further proceedings herein.

And on motion of the said cross-complainants and intervenors, appearing by Mr. Arthur I. Moulton, Mr. John M. Day and Mr. Lewis C. Garrigus, of counsel, it is ordered that cross-complainants and intervenors herein be, and they are each hereby, allowed ninety days from this date within which to take further proceedings herein.

CHAS. E. WOLVERTON,
Judge.

And afterwards, to-wit, on the 24th day of April, 1911, there was duly filed in said Court, an opinion on demurrers in words and figures as follows, to-wit:

[OPINION ON DEMURRERS]

In the Circuit Court of the United States

For the District of Oregon

UNITED STATES OF AMERICA,
vs.
OREGON AND CALIFORNIA RAILROAD COMPANY, ET AL.,
Defendants.
JOHN L. SNYDER, ET AL.,
Cross-Complainants.
FRANK TERRACE, ET AL.,
Interveners.

No. 3330

JOHN MCCOURT, United States Attorney,
B. D. TOWNSEND and TRACEY C. BECKER,
Special Counsel for the Government.

P. F. DUNNE, WM. D. FENTON and WM SINGER, JR.,
For Defendants.

A. W. LAFFERTY and ARTHUR I. MOULTON,
For Cross-Complainants.

C. I. LEAVENGOOD, CHARLES E. SHEPARD,
WM. H. FLETT, JNO. MILLS DAY,
and M. E. BREWER,
For Interveners.

After setting out the citizenship and residence of the respective parties, the bill of complaint states, in effect:

On July 25, 1866, Congress passed an act granting lands in aid of the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon. By its first section the act authorizes and empowers the California and Oregon Railroad Company, and such company organized under the laws of the State of Oregon as the Legislature thereof shall thereafter designate, to construct and maintain a railroad and telegraph line between the city of Portland, in Oregon, and the Central Pacific Railroad, in California:

Thereafter it is provided as follows:

> Sec. 2. "That there be, and hereby is, granted to the said companies. their successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the line of said railroad, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line; and when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of, other lands, designated as aforesaid, shall be selected by said companies in lieu thereof, under

the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first-named, alternate sections; and as soon as the said companies, or either of them, shall file in the office of the Secretary of the Interior a map of the survey of said railroad, or any portion thereof, not less than sixty continuous miles from either terminus, the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad, so far as located and within the limits before specified. The lands herein granted shall be applied to the building of said road within the states, respectively, wherein they are situated. And the sections and parts of sections of land which shall remain in the United States within the limits of the aforesaid grant shall not be sold for less than double the minimum price of public lands when sold: Provided, That bona fide and actual settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement, and occupation, as now provided by law, purchase the same at the price fixed for said lands at the date of such settlement, improvement and occupation. And provided, also, That settlers under the provisions of the Homestead Act, who comply with the terms and requirements of said Act, shall be entitled, within the limits of said grant, to patents for an amount not exceeding eighty acres of the land so reserved by the United States, anything in this Act to the contrary notwithstanding."

> Sec. 3. "That the right of way through the public lands be, and the same is hereby, granted to said companies for the construction of said railroad and telegraph line; and the right, power, and authority are hereby given to said companies to take from the public lands adjacent to the line of said road, earth, stone, timber, water, and other materials for the construction thereof. Said right of way is granted to said railroad to the extent of one hundred feet in width on each side of sail railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, depots, machine-shops, switches, side-tracks, turntables, water stations, or any other structures required in the construction and operating of said road."

Sec. 4. That, whenever twenty or more consecutive miles of the road shall have been completed and ready for use, the same shall be examined by three commissioners appointed by the President, who are required to report to the President; and if it shall appear that the line of road and telegraph has been constructed and equipped in accordance with the terms of the Act, then that patents shall issue to the company entitled to the same for the lands granted to the extent and coterminous with the completed section, and thus from time to time, whenever other sections of the road shall be completed, until the entire line shall have been constructed.

> Sec. 5. "That the grants aforesaid are made upon the condition that the said companies shall keep

said railroad and telegraph in repair and use, and shall at all times transport the mails upon said railroad, and transmit despatches by said telegraph line for the Government of the United States, when required so to do by any department thereof, and that the Government shall at all times have the preference in the use of said railroad and telegraph therefor at fair and reasonable rates of compensation, not to exceed the rates paid by private parties for the same kind of service. And said railroad shall be and remain a public highway for the use of the Government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by the Government of the United States."

Sec. 6. "That the said companies shall file their assent to this Act in the Department of the Interior within one year after the passage hereof, and shall complete the first section of twenty miles of said railroad and telegraph within two years, and at least twenty miles in each year thereafter, and the whole on or before the first day of July, one thousand eight hundred and seventy-five; and the said railroad shall be of the same gauge as the 'Central Pacific Railroad' of California, and be connected therewith."

Sec. 7. "That the said companies named in this Act are hereby required to operate and use the portions or parts of said railroad and telegraph mentioned in section one of this Act for all purposes of transportation, travel, and communication, so far as the Government and public are concerned, as one connected and continuous line; and in such operation and use to afford and secure to each other equal advantages and facilities as to rates, time, and transportation, without any discrimination whatever, on pain of forfeiting the full amount of damage sustained on account of such discrimination, to be sued for and recovered in any Court of the United States, or of any State, of competent jurisdiction."

Sec. 8. "That in case the said companies shall fail to comply with the terms and conditions required, namely, by not filing their assent thereto as provided in section six of this Act, or by not completing the same as provided in said section, this Act shall be null and void, and all the lands not conveyed by patent to said company or companies, as the case may be, at the date of any such failure, shall revert to the United States. And in case the said road and telegraph line shall not be kept in repair and fit for use, after the same shall have been completed, Congress may pass an act to put the same in repair and use, and may direct the income of said railroad and telegraph line to be thereafter devoted to the United States, to repay all expenditures caused by the default and neglect of said companies

> or either of them, as the case may be, or may fix pecuniary responsibility, not exceeding the value of the lands granted by this Act."

Sec. 9. That the companies concerned shall be governed by the general laws of the respective states as to the construction and management of said railroad and telegraph line in all matters not provided for in the Act.

Sec. 10. That all mineral lands, except such as shall contain coal and iron, shall be excepted from the operation of the grant; but that, where such lands contain timber, so much of the timber as shall be required to construct the road over the lands is hereby granted.

Sec. 11. That said companies shall be governed by the statutory regulations of the States concerned in all matters pertaining to the right of way wherever said road shall not pass through public lands of the general Government.

> Sec. 12. "That Congress may at any time, having due regard for the rights of said California and Oregon railroad companies, add to, alter, amend, or repeal this Act."

This Act was amended June 25, 1868, whereby section six thereof was made to provide that "Instead of the times now fixed in said section, the first section of twenty miles of said railroad and telegraph shall be completed within eighteen months from the passage of this Act, and at least twenty miles in each two years thereafter, and the whole on or before the first day of July, anno Domini eighteen hundred and eighty."

About October 6, 1866, certain persons attempted to organize a corporation bearing the name "Oregon Central Railroad Company," having its principal office at Portland, Oregon. This company projected its line of road from Portland to Forest Grove, thence to McMinnville, on the westerly side of the Willamette River. For convenience, it will be hereafter referred to as the "West Side Company," and its line as the "West Side Line."

On October 10, 1866, the Legislative Assembly of the State of Oregon by joint resolution, designated the Oregon Central Railroad Company as the organization entitled to receive the grant and benefits accorded by the Act of Congress of July 25, 1866. This company, on May 25, 1867, assented to the provisions of said Act of Congress, and thereafter, about July 6, 1867, filed an authenticated copy of its resolution, together with a certified copy of its articles of incorporation and of the joint resolution of the Legislative Assembly of Oregon, with the Secretary of the Interior, and on about the 20th of August, 1868, filed with such officer a general map of survey of its projected line of railroad.

In the meantime, namely, about April 22, 1867, certain persons, contending that said West Side Company was not regularly and lawfully incorporated, and designing to secure the grant and privileges accorded by said Act of Congress of July 25, 1866, organized another corporation bearing the name "Oregon Central Railroad

Company," having its principal place of business at the city of Salem, Oregon. This company projected its line of road on the easterly side of the Willamette River, and for convenience will be designated the "East Side Company," and its line the "East Side Line."

On October 20, 1868, the East Side Company procured a joint resolution to be adopted by the Legislative Assembly of the State of Oregon, whereby, after setting out, among other things, the adoption of the Act of Congress of July 25, 1866, the adoption by the Legislature of the State of House Joint Resolution No. 13, designating the Oregon Central Railroad Company as the organization entitled to the benefits of the grant and privileges accorded by said Act of Congress, that at the time of the adoption of such resolution no such company as the Oregon Central Railroad Company was organized or in existence, that the resolution was adopted under a misapprehension of the facts, and that the proper designation yet remained to be made, it was resolved that the Oregon Central Railroad Company, a corporation organized at Salem on April 22, 1867, "be and the same is hereby designated as the company entitled to receive the lands in Oregon, and the benefits and privileges conferred by the said Act of Congress." Thereupon a controversy arose between the West Side Company and the East Side Company as to which was entitled to the benefits of the said Act of Congress, and, the time within which to file an assent having expired long prior to the designation of the East Side Company by the Legislative Assembly of Oregon, the said East Side Company applied to Congress for an extension of time for filing its assent; following which the respective contentions of the East and the West Side Companies relative to the right to receive the benefits of the Act of July 25, 1866, were placed before Congress, and that body, on April 10, 1869, passed an act amendatory of section six of the Act of July 25, 1866, in language following:

> "That section six * * * * be, and the same is hereby, amended so as to allow any railroad company heretofore designated by the Legislature of the State of Oregon, in accordance with the first section of said Act, to file its assent to such Act in the Department of the Interior within one year from the date of the passage of this Act; and such filing of its assent, if done within one year from the passage hereof, shall have the same force and effect to all intents and purposes as if such assent had been filed within one year after the passage of said Act: Provided, That nothing herein shall impair any rights heretofore acquired by any railroad company under said Act, nor shall said Act or this amendment be construed to entitle more than one company to a grant of land; And provided further, That the lands granted by the Act aforesaid shall be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre."

On June 8, 1869, the East Side Company adopted a resolution assenting to the terms of the Act of July 25, 1866, an authenticated copy of which was filed in the office of the Secretary of the Interior on June 13, 1869. This resolution by its preamble set forth, among other things, that no company was designated within the year within which an assent was required to be filed to the Act of July 25, 1866, and that Congress did, on April 10, 1869, pass an act extending the time in which assent might be filed. About October 29, 1869, the East Side Company filed in the office of the Secretary of the Interior a map of survey and location of the first sixty miles of its projected line of railroad; and on December 24th of the same year completed the construction of the first twenty miles of road, from Portland south, which was approved December 31st by commissioners duly appointed.

The West Side Company wholly failed to construct any part of its projected line of road, and abandoned and waived all claim to the benefits to accrue under said Acts of Congress, and in lieu thereof applied for and obtained and accepted a similar grant of lands, franchises, and other benefits pertaining to its projected line of road by Act of Congress approved May 4, 1870.

The East Side Company having become involved in litigation questioning the validity of its organization, also its rights to use the corporate name adopted, on March 17, 1870, its officers, stockholders, and promoters organized the Oregon and California Railroad Company, the principal purpose of this organization being to become the successor to said East Side Company, and to receive, hold, and exercise the grants, franchises, and privileges accorded by said Act of Congress of July 25, 1866, and acts amendatory thereto. Pursuant to such purpose, the East Side Company, on March 29, 1870, executed and delivered to the Oregon and California Railroad Company a certain instrument of writing purporting to assign, transfer and convey to the latter company all the property of the former, including all its right, title, and interest in and to the grants, franchises, and benefits under the act of July 25, 1866.

On April 4, 1870, the Oregon and California Railroad Company adopted a resolution, whereby the company accepted the grant conferred by the Act of Congress of July 25, 1866, and acts amendatory thereof, and authorized its president and secretary to file such assent in the office of the Secretary of the Interior, together with an authenticated copy of the deed of assignment from the Oregon Central Railroad Company. A copy of the resolution and deed of assignment was filed with the Secretary of the Interior April 28, 1870; and from that time on the Oregon and California Railroad Company assumed and continued to act as the successor to the Oregon Central Railroad Company, being the said East Side Company.

On May 4, 1870, Congress passed an act granting certain lands to the Oregon Central Railroad Company —the West Side Company—to aid in the constrnction of a railroad and telegraph line from Portland to Astoria and McMinnville, in Oregon, which provides as follows:

"That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria and from a suitable point of junction near Forest Grove to the Yamhill River, near McMinnville, in the State of Oregon, there is hereby granted to the Oregon Central Railroad Company, now engaged in constructing the said road, and to their successors and assigns, the right of way through the public lands of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands materials for constructing said road, and also the necessary lands for depots, stations, side-tracks, and other needful uses in operating the road, not exceeding forty acres at any one place; and, also, each alternate section of the public lands, not mineral, excepting coal or iron lands, designated by odd numbers nearest to said road, to the amount of ten such alternate sections per mile, on each side thereof, not otherwise disposed of or reserved or held by valid preemption or homestead right at the time of the passage of this Act. And in case the quantity of ten full sections per mile cannot be found on each side of said road, within the said limits of twenty miles, other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty-five miles from the track of said road to make up such deficiency."

Sec. 2. "That the commissioner of the general land office shall cause the lands along the line of the said railroad to be surveyed with all convenient speed. And whenever and as often as the said company shall file with the Secretary of the Interior maps of the survey and location of twenty or more miles of said road, the said Secretary shall cause the said granted lands adjacent to and coterminous with such located sections of road to be segregated from the public lands; and thereafter the remaining public lands, subject to sale within the limits of the said grant, shall be disposed of only to actual settlers, at double the minimum price for such lands; And provided also, That settlers under the provisions of the Homestead Act who comply with the terms and requirements of said Act, shall be entitled, within the said limits of twenty miles, to patents for an amount not exceeding eighty acres each of the said ungranted lands, anything in this Act to the contrary notwithstanding."

Sec. 3. "That whenever and as often as the said company shall complete and equip twenty or more consecutive miles of the said railroad and telegraph, the Secretary of the Interior shall cause the same to be examined, at the expense of the company, by three commissioners appointed by him; and if they shall report that such completed section is a first-class railroad and telegraph, properly equipped and ready for use, he shall cause patents to be issued to the company for so much of the said granted lands as shall be adjacent to and coterminous with the said completed sections."

Sec. 4. "That the said alternate sections of land granted by this Act, excepting only such as are necessary for the company to reserve for depots, stations, side-tracks, wood-yards, standing ground, and other needful uses in operating the road, shall be sold by the company only to actual settlers, in quantities not exceeding one hundred and sixty acres or a quarter section to any one settler, and at prices not exceeding two dollars and fifty cents per acre."

Sec. 5. "That the said company shall, by mortgage or deed of trust to two or more trustees, appropriate and set apart all the net proceeds of the sales of the said granted lands, as a sinking fund, to be kept invested in the bonds of the United States, or other safe and more productive securities, for the purchase from time to time, and the redemption at maturity, of the first mortgage construction bonds of the company, on the road depots, stations, side-tracks, and wood-yards, not exceeding thirty thousand dollars per mile of road, payable in gold coin not longer than thirty years from date, with interest payable semi-annually in coin not exceeding the rate of seven per centum per annum; and no part of the principal or interest of the said fund shall be applied to any other use until all the said bonds shall have been purchased or redeemed and canceled; and each of the said frist mortgage bonds shall bear the certificate of the trustees, setting forth the manner

> in which the same is secured and its payment provided for. And the District Court of the United States, concurrently with the State courts, shall have original jurisdiction, subject to appeal and writ of error, to enforce the provisions of this section."
>
> Sec. 6. "That the said company shall file with the Secretary of the Interior its assent to this Act within one year from the time of its passage; and the foregoing grant is upon condition that said company shall complete a section of twenty or more miles of said railroad and telegraph within two years, and the entire railroad and telegraph within six years, from the same date."

About July 2, 1870, the West Side Company, through its board of directors, adopted a resolution assenting to and accepting all the provisions of said Act, and thereafter, on July 20th, filed an authenticated copy of such resolution in the office of the Secretary of the Interior. About August 15, 1870, all the capital stock of the West Side Company was acquired by the owners of the capital stock of the Oregon and California Railroad Company, and thereafter the capital stock of both companes was held as a single interest, and the affairs of the two companies were conducted as a single enterprise within the dissolution of the West Side Company.

With funds derived from mortgage bonds and otherwise, the East Side Line, up to the month of January, 1873, was constructed as far south as Roseburg, a distance of 197 miles from Portland, and said West Side Line to McMinnville, a distance of forty-seven miles. At that time the companies became insolvent, and the construction of the East Side Line was not resumed until in June, 1881, while the West Side Line was never resumed. Thereafter, from about July 24, 1874, the direction and control of the financial affairs of the two companies were assumed and exercised by the creditors thereof, organized under the name and designation "Bondholders' Committee," which committee subsequently acquired all the capital stock of said companies. About October 6, 1880, the Bondholders' Committee caused the West Side Company to execute and deliver to the Oregon and California Railroad Company a certain instrument in writing purporting to assign, transfer and convey to the latter company all the property of the former, including all its right, title and interest in and to the grant, franchises, and other benefits accruing in pursuance of the Act of Congress of May 4, 1870. Ever since said date the Oregon and California Railroad Company has assumed to be the rightful successor to the said West Side Company.

For convenience, the respective grants by Congress will be alluded to as the East Side Grant and the West Side Grant.

About May 7, 1881, through a readjustment of the capital stock of the Oregon and California Railroad Company by its board of directors and stockholders, all the former capital stock of said company was canceled, and a reissue was had, consisting of $12,000,000, preferred stock, and $7,000,000 common stock, aggregating $19,000,000. Through the issuance of this stock, and the use in part of the proceeds of a new bond issue, all of the company's existing indebtedness was then fully paid and discharged.

About June 2, 1881, the Oregon and California Railroad Company executed and delivered to Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, as trustees for the owners and holders of the said preferred stock, an instrument of writing purporting to convey to said trustees all lands comprised by both of said land grants, in trust, to secure to the owners of said preferred stock some asserted right or interest in or to said lands, and for certain other purposes more particularly specified in said instrument. Thereafter Stephen T. Gage succeeded to the trusteeship under said instrument, and is now the sole surviving trustee. He, by virtue thereof, and the Southern Pacific Company, by virtue of its ownership of the preferred stock, claim and assert some right, title and interest in, or lien upon, the granted lands.

In June, 1881, and May, 1883, the Oregon and California Railroad Company issued first and second mortgage bonds aggregating, approximately, $5,000,000, the work of construction was resumed, and the East Side Line was extended to a point one and one-quarter miles south of Ashland, a distance of approximately 145 miles.

This extension was completed about the month of January, 1884, and the work of extension was not again resumed until in April, 1887. In January, 1885, by reason of default in payment of said first and second mortgage bonds, the Oregon and California Railroad Company was placed in the hands of a receiver.

In connection with these facts, which are more fully set out in the bill of complaint, it is alleged that the West Side Company acquired no right or interest in or to the East Side Grant, and that the said East Side Company acquired no right or interest therein except subject to all the terms and conditions of the Act of Congress of April 10, 1869; that the principal purpose of the conveyance of date March 29, 1870, was not to operate as a sale or conveyance of any of the lands granted by said Act of Congress of July 25, 1866, but was to constitute the Oregon and California Railroad Company the successor to the said East Side Company, to construct and equip said line of railroad, and to receive the grant and exercise the franchises and other benefits accorded by said Act of Congress—the same allegation being made with reference to the conveyance by the West Side Company to the Oregon and California Railroad Company, of date Oct. 6, 1880, that the original capital stock of the Oregon and California Railroad Company, and substantially all the stock of the West Side Company, were issued without consideration; that neither of said companies had any funds for construction or other purposes, except such as were borrowed therefor; and that the deed of trust to Villard and other trustees purports to

nvey and to authorize said trustees to sell and convey
id lands comprised by the said East and West Side
ants to other than actual settlers, in quantities greater
an one quarter section to one person, and at a price
eater than $2.50 per acre, and was therefore in viola-
on and breach of the express terms of the grants.

It is further alleged, in effect, as follows: About
anuary, 1885, a certain railroad syndicate, known as
e "Southern Pacific System," controlling substan-
ally all the railroad lines in the southwestern part of
e United States, including the Central Pacific Rail-
ad, organized the Southern Pacific Company as a gen-
al holding company for said syndicate, and on or about
arch, 1885, the Southern Pacific Company acquired,
d has since exercised, a controlling interest in each of
e corporations constituting said Southern Pacific Sys-
m, and is the lessee of all of the railroad lines controlled
said system, exercising control thereof, as well as con-
ol over, and the handling and disposal of, all the lands
its constituent companies. Shortly after the organ-
ation of the Southern Pacific Company it established
land department in San Francisco, California, for the
ntrol, handling, and disposal of lands of its constitu-
t companies held under grants from the Government;
d after the Oregon and California Railroad Company
ssed into the hands of a receiver, the Southern Pa-
fic Company, designing to acquire ownership and con-
ol of its holdings, entered into negotiations with said
mpany, and the bondholders and stockholders thereof,
hich resulted in a contract, of date March 28, 1887,

the general effect being that the Oregon and California Railroad Company, together with its line of railroad, was absorbed by, and merged into, the said Southern Pacific System; and the complainant charges that it was further the purpose and design of the Southern Pacific Company to secure control of the Oregon and California Railroad Company's land grants, and to divert the same from the purposes for which such grants were made to the exclusive use and benefit of the Southern Pacific Company. Thereafter the Oregon and California Railroad Company was continued a corporation in name only, and as an instrumentality and device for the administration of these grants.

About May 12, 1887, in pursuance of the contract of March 28, 1887, all of the capital stock, and all of said second mortgage bonds of the Oregon and California Railroad Company were assigned and transferred to the Pacific Improvement Company, and all of said first mortgage bonds were assigned and transferred to the Southern Pacific Company. The Pacific Improvement Company was a corporation controlled and directed by the owners of a majority of the capital stock of the Southern Pacific Company, and held the capital stock of the Oregon and California Railroad Company in trust for the use and benefit of the Southern Pacific Company until about April 9, 1901, when all of such capital stock was transferred to the Southern Pacific Company, which company is now the owner and holder thereof.

Pursuant, further, to the contract of March 28, 1887, the Southern Pacific Company and the Oregon and California Railroad Company entered into a contract of lease, in writing, whereby the railroad and telegraph lines of the latter company were leased to the former for the term of forty years, which remained in full force and effect until about August 1, 1893, when the said companies entered into a further contract, whereby such properties were leased to the Southern Pacific Company for the term of thirty-four years, which latter contract is still in full force and effect, and by virtue whereof the Southern Pacific Company entered into, and is now in the full possession, management, and control of said properties.

In pursuance, also, of the contract of March 28, 1887, the Oregon and California Railroad Company, on about January 3, 1888, executed and delivered to the Union Trust Company its mortgage upon certain of its properties, to secure certain bonds, then issued and thereafter to be issued, of which approximately $17,500,000 in amount are still outstanding. Although executed by the Oregon and California Railroad Company, the bonds were guaranteed by the Southern Pacific Company, and were used by that Company to purchase the outstanding securities of the Oregon and California Railroad Company, and to complete the construction of and improve the lines of the said latter company. In this relation, it is averred that said mortgage deed, in so far as it relates to any of the granted lands, if at all, purports to convey, and to authorize the Union Trust Company to sell and convey said lands to persons other than actual settlers, in quantities greater than one quarter section to one purchaser, and for a price exceeding $2.50 per acre, and for purposes other than those authorized by said grants.

During the year 1887, the last section of the East Side Line, extending from Ashland to the southern boundary of the State of Oregon, was completed, and on or about the 6th day of June, 1888, the receivership proceedings were wound up, and the receiver discharged. All of the first and second mortgage bonds (not including the issue of July, 1887), together with all mortgages and trust deeds securing the payment thereof, were canceled and discharged; whereupon the Southern Pacific Company entered into the possession and management of all of the properties of the Oregon and California Railroad Company, as aforesaid.

Under the East Side Grant, and during the years 1871 to 1877, inclusive, patents for approximately 323,000 acres of land were applied for by, and issued to, the Oregon and California Railroad Company, being lands contiguous to the first 125 miles of said East Side Line. No patents were applied for or issued within that time under the West Side Grant. Commencing about the year 1891, other patents were applied for, and from 1893 up to 1906, lands aggregating 2,450,000 acres were patented to the Oregon and California Railroad Company under the East Side Grant; and commencing about the year 1895, approximately 128,000 acres under the West Side Grant. Of the lands so granted the Oregon and California Railroad Company has made approximately 5,306 sales, aggregating about 820,000 acres, as follows: Sales in quantities not exceeding one quarter section, 4930, covering 296,000 acres, and sales in quantities exceeding one quarter section, 376, covering 524,000 acres. In this connection, it is alleged that the Oregon and California Railroad Company, under the direction and domination of the Southern Pacific Company, from the year 1894 until about January 1, 1903, sold, and disposed of said granted lands in manner and upon terms in violation and breach of the terms and conditions of the grants; that is to say, said lands were sold to speculators and persons other than actual settlers, and in quantities greatly in excess of one quarter section to one purchaser, namely, in quantities ranging from 1,000 to 45,000 acres to a single purchaser, and for prices greatly in excess of $2.50 per acre, the same ranging from $5.00 to $40.00 per acre. That about 90 per cent of the said 524,000 acres was sold or conveyed since the year 1897, and of this approximately 370,000 acres were sold to thirty-eight purchasers, in quantities exceeding 2,000 acres to each purchaser. On January 1, 1903, there remained unsold of said granted lands approximately 2,373,000 acres, consisting of about 2,080,000 acres which have been patented, and 293,000 acres unpatented, now claimed by the defendant, Oregon and California Railroad Company, by virtue of said grants.

It is alleged that since January 1, 1903, many persons have applied to the Oregon and California Railroad Company to purchase the lands remaining unsold, in quantities of 160 acres to each purchaser, the said applicants desiring and intending in good faith to settle thereupon, and to make permanent homes thereof, but that said applications have been refused and rejected, and the said Oregon and California Railroad Company and the Southern Pacific Company have, since January 1, 1908, withdrawn all of said unsold lands from sale, and have at all times thereafter refused, and do now refuse, to sell any part of said grants, to actual settlers or for purposes of actual settlement, in quantities or for prices as prescribed by the terms and conditions of such grants. In setting forth these facts, it is further alleged that since said January 1, 1908, the Oregon and California Railroad Company has assumed, and now asserts, an absolute and unconditional estate in and to all of said unsold lands, and that, by reason of the premises and the relationship which the Southern Pacific Company sustains to the Oregon and California Railroad Company, all of such unsold lands have been converted to the use and benefit of the said Southern Pacific Company; that the Oregon and California Railroad Company has derived benefits from said grants other than from sales of the lands, namely, from forfeiture of contracts of sale, from leases, and from timber cut from the grants; and in further detail, matters are alleged upon which to base injunctive process; and other matters designed to excuse delay in instituting this suit.

On February 14, 1907, a memorial was presented to Congress, praying that steps be taken to compel the Oregon and California Railroad Company to comply with the terms of the said grants or to require a forfeiture of the lands granted. Later, on April 30, 1908, Congress adopted a joint resolution providing as follows:

> "That the Attorney General of the United States be, and he hereby is, authorized and directed to institute and prosecute any and all suits in equity, actions at law, and other proceedings which he may deem adequate and appropriate to enforce any and all rights and remedies of the United States of America in any manner arising or growing out of or pertaining to either or any of the following described Acts of Congress, to wit: 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon,' approved July twenty-fifth, Eighteen Hundred and Sixty-six, as amended by the acts approved June twenty-fifth, Eighteen Hundred and Sixty-eight, and April tenth, Eighteen Hundred and sixty-nine; * * Also 'An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon,' approved May fourth, Eighteen Hundred and Seventy, including all rights and remdies in any manner relating to the lands, or any part thereof, granted by either or any of said Acts; and in and by any and all such suits, actions or proceedings, the Attorney General shall, in such manner as he shall deem appropriate, assert all rights and remedies

> existing in favor of the United States, relating to the subject of such suits, actions and proceedings, including the claim on behalf of the United States that the lands granted by each of said Acts respectively, or any part thereof, have been and are forfeited to the United States by reason of any breaches or violations of any of the terms or conditions of either or any of said Acts which may be alleged and established in any such suits, actions or proceedings; it not being intended hereby to determine the right of the United States to any such forfeiture or forfeitures, but it being intended to fully authorize the Attorney General in and by such suits, actions or proceedings to assert on behalf of the United States and the Court or Courts before which such suits, actions or proceedings may be instituted or pending to entertain, consider, and adjudicate the claim and right of the United States to such forfeiture or forfeitures, and if found to enforce the same."

This suit is instituted in pursuance of said joint resolution, and it is further alleged that by reason of the premises all of said granted lands now unsold, and such as were sold in violation of the grants, are forfeited to the United States, and specifically that: "Pursuant to the authority and direction contained in said joint resolution of Congress approved April 30th, A. D. 1908, your orator does hereby assert title to, and does hereby resume the title of, all of said lands and estate in lands forfeited to your orator as aforesaid." The relief demanded is:

1. That the Court adjudge and decree all unsold lands comprised by said grants, whether patented or unpatented, to be forfeited to the United States, and the title thereof quieted; or, if such relief be denied,

2. That the Court adjudge and decree that all such unsold lands are subject to purchase by actual settlers, in quantities of 160 acres to one purchaser, and for a price not exceeding $2.50 per acre, and that a receiver be appointed to carry into effect the conditions of the grants in that respect; or, if this relief be denied,

3. That a mandatory injunction issue requiring the Oregon and California Railroad Company to sell such unsold lands in compliance with the terms of the grants.

An injunction is further sought, also, an accounting for moneys received for lands unlawfully sold, discovery, and general relief.

Prior to the filing of the bill of complaint, John L. Snyder and sixty-six others had instituted suits against the defendants the Oregon and California Railroad Company, the Union Trust Company, and S. T. Gage, to require such defendants to convey to said complainants each a tract of 160 acres of land included in the West Side Grant. These parties claim their right to such conveyances by reason of having settled upon lands designated, with a bona fide purpose of making said lands their homes, and of having tendered to the Oregon and California Railroad Company the sum of $2.50 per acre, or $400 for each quarter section so settled upon, in alleged pursuance of the act of May 4, 1870, making such grant. When, however, the United States instituted its suit making the complainants in the Snyder suit parties thereto, the causes were consolidated, and Snyder and others have filed their cross-bill in the Government's case, setting up their alleged rights. The particular feature of this cross-bill, after setting out the history of the grant in purport much as it is narrated in the complaint, is voiced in its ninth paragraph, whereby it is alleged, in substance, that Congress, by the Act of May 4, 1870, intended to and did grant to the Oregon Central Railroad Company, and to its successor, the Oregon and California Railroad Company, a limited beneficial interest in the lands specified in the act, and to that end made and constituted the Oregon and California Railroad Company a mere intermediary trustee, through which to convey the legal title to the odd-numbered sections comprised by the grant to such citizens of the United States as might thereafter settle upon such lands; that Congress did not intend to grant to said railroad company any possessory title to any of said lands, except for depot grounds, stations, etc., but reserved the right to citizens of the United States to enter upon and take possession of all of said lands, and to purchase the same from the railroad company upon becoming actual settlers upon the respective tracts selected; in other words, in order to afford financial aid to the grantee, Congress constituted the railroad company a trustee, for the express purpose, and with power and authority to sell and convey the lands designated to actual settlers, and that thereby the railroad company became a trustee as to such lands for the United States, and for all citizens of the United States who may now be actual settlers upon such lands. It is further asserted that the railroad company refused to accept the tender made by cross-complainants of the purchase price, and refused and still refuses to make conveyances of the lands selected and settled upon, and now claims and asserts ownership of the absolute fee simple title thereto.

Many persons, amounting to several thousand, through intervention permitted by order of the Court, have filed complaints against the defendant railroad companies, claiming the right to purchase from the Oregon and California Railroad Company certain lands comprised by the grants of Congress of July 25, 1866, and May 4, 1870. These complaints, in their narration of the history of the grants, follow very closely the allegations contained in the Government's bill. The particular claim, however, upon which the complainants therein found their alleged right is set forth, in substance, as follows: That since January 1, 1903, and prior to the commencement of the Government's suit, the interveners applied to the Oregon and California Railroad Company to purchase certain of the lands comprised by the aforesaid grants; that in so applying each of the said interveners made request to purchase 160 acres or one quarter section of land, and thereupon offered to pay to said company the sum of $2.50 per acre, or $400 per quarter section, and tendered the amount each for the parcel of land selected, and demanded a deed of conveyance, therefor, under the alleged terms and conditions of the grants of Congress; that each of the interveners, ever since his application to purchase was made, has been and now is ready and willing to pay said money consideration, and offers to bring the same into Court to be used for such purpose, if the Court shall so order, and that each is a qualified purchaser under the terms of the grants, and at the time of the application intended, and now intends, to make actual settlement upon the tract of land so selected, and henceforth to use the same as an actual settler.

It is further alleged that the interveners have a prior right, estate, and vested interest in the property, to the extent of the amount of land which each has so applied to purchase; that under the terms and conditions of said Acts of Congress, it was the legal duty and obligation of the Oregon and California Railroad Company to issue its deed for the lands applied for upon payment of the purchase price as named, and that as to such interveners the Court is without jurisdiction to declare the lands forfeited to the Government.

Many other persons have also intervened, by permission of the Court, who have made applications to the Oregon and California Railroad Company to purchase since the commencement of the Government's suit, who base their alleged right and claim upon like application and tender as the prior interveners, the allegations of their complaints conforming very nearly to those of such prior interveners.

Demurrers to the Government's bill, to the cross-bill, and to all bills of intervention, which are pertinent to raise the paramount questions involved by the controversy, have been interposed by the defendant railroad companies and Stephen T. Gage, and also by the Union Trust Company.

WOLVERTON, District Judge:

Counsel for the defendant railroad companies and S. T. Gage make the following points of contention in support of their demurrers to the bill of complaint, the cross-complaint, and the bills of intervention. I quote from their reply brief:

> "I. Rights acquired by the East Side Company under the Act of 1866, deprived Congress of the power, by amendatory Act of 1869, to impose new conditions on the estate; besides the amendatory Act expressly save 'rights acquired' under the Act of 1866.
>
> "II. The controlling purpose of Congress in making the land grants, here and by the Union Pacific Act, as expressly stated in each Act, is the same; hence, here as there, any policy of Congress to promote settlement of the lands 'was manifestly subordinated to the higher purpose of having the road constructed with the aid of the land grant.' (99 U. S. 48-67.)
>
> "III. The 'actual settler' proviso is not a con-

dition, because it does not (a) enure specially to the grantor, nor (b) indicate that forfeiture shall attend its breach, and (c) is not compulsory; but if a condition it is void for (d) repugnancy to the grant, and (e) restraint of alienation.

"IV. The 'actual settler' proviso is a personal covenant between grantor and grantee, only. Specific performance cannot be enforced because (a) it is not compulsory, (b) lacks mutuality of right and remedy, and (c) is the nature of a continuing contract. Besides, whether compulsory or prohibitive, it is (d) in restraint of alienation.

"V. As the 'actual settler' proviso is not compulsory withdrawal of the lands in suit from sale is not a breach; and the other alleged breaches would not operate forfeiture of these unsold lands, were the proviso a condition.

"VI. Were the 'actual settler' proviso a condition, broken as alleged, grantor has waived the breach by (a) apparent asquiesence in the many deeds of record made by the Railroad Company in violation of the proviso; (b) acceptance and use of the road; (c) annual issuance of land patents, from 1871 to 1906; and by (d) effect of the general forfeiture Acts of January 31st, 1885, and September 29th, 1890.

"VII. The land patents are conclusive. Were they void, the title which they purport to convey was confirmed by the force and effect of the Acts of

March 3rd, 1891, and March 2nd, 1896; which Acts also bar this suit as to all lands patented prior to October, 1902.

"VIII. All causes of action sought to be presented by the bill other than forfeiture and to quiet title, are also barred by laches and limitations; it appearing that as to those other causes of action complainant is not the real party in interest. Cross-complainants and interveners are also barred by laches and limitations.

"IX. Were the 'actual settler' proviso a condition, which has been broken, still this suit could not be maintained as one to enforce forfeiture, nor to quiet any title which complainant could acquire by such a judgment, because (a) grantor has not declared forfeiture, (b) the fact of forfeiture has not been adjudged at law, and (c) the defendant Railroad Company holds the legal title and possession."

These will be considered, though not in the order of their statement; but in the meanwhile it will be necessary to determine the contention of the cross-complainants and interveners.

It should be premised that the theory of the bill is not that the grants have not been fully earned so as to entitle the Oregon and California Railroad to have the patents issue, but that, being earned, and patents in large measure having issued, the company has failed to comply with certain terms attending the grants, which it is claimed are conditions subsequent qualifying the estate granted, and that thereby the estate, whether now held under patent or as yet in pursuance of the acts making the grants, has been forfeited to the United States.

The several acts, namely, the Act of July 25, 1866, the Acts of June 25, 1868, and April 10, 1869, amendatory thereof, and the Act of May 4, 1870, contain all of the provisions of Congress relative to the granting of the public lands in question. Scarcely four years elapsed from the inception of the legislation until the last act was adopted, and, viewed as a whole, extending from the first to its final development and adaptation, it indicates a common purpose, and should be considered *in pari materia.*

A corporation bearing the name "Oregon Central Railroad Company" was organized October 6, 1866, with its principal offices at Portland, Oregon. This company, it is alleged, projected its line of road southward from Portland, on the westerly side of the Willamette River, and on October 10, 1866, the Legislative Assembly of the State of Oregon, by joint resolution, designated it as the company entitled to receive the grant under the Act of Congress of July 25, 1866. This company also adopted a resolution on May 25, 1867, assenting to the provisions of the grant, and filed a copy thereof with the Secretary of the Interior July 6, 1867. On August 20, 1868, the company filed with the Secretary of the Interior a map of survey of its projected line. On April 22, 1867, another corporation was or-

nized, under the same name, with its principal place
business at Salem, Oregon. This company, claiming
at the one previously organized was not lawfully in-
rporated, procured, on October 20, 1868, the adoption
a joint resolution by the Legislative Assembly of
egon, designating it as the organization entitled to
eive the grant. This resolution by preamble sets out
at at the time of its adoption no such company as the
egon Central Railroad Company, with its principal
fice at Portland, was organized or in existence, and
at the previous joint resolution designating that com-
ny as the one entitled to receive the grant was adopted
der a misapprehension of the facts. On June 8, 1869,
e company last organized, with its principal office at
lem, being the East Side Company, adopted a resolu-
n assenting to the provisions of the act of Congress
July 25, 1866, and specifically to the amendments
ereto, which resolution was filed in the office of the
cretary of the Interior June 30, 1869. On October
, 1869, this company filed its map of survey and loca-
n of the first sixty miles of its projected line of rail-
ad on the East Side, and on December 24, 1869, com-
eted the construction of its first twenty-mile section,
e same being approved on the 31st of that month. The
egations of the bill do not show that the company
s engaged in the work of construction prior to the
ne of filing its assent, namely, June 30, 1869; but for
e purposes of this controversy it may be assumed that
ch was the case, as it is not at all probable that the
ction was built in so short a time as intervened be-

tween the date of such filing and that of the completion of the section.

On July 2, 1870, the company first organized—the West Side Company—by resolution assented to the grant of May 4, 1870, and filed a copy of such resolution with the Secretary of the Interior July 20, 1870. The Oregon and California Railroad Company was incorporated March 17, 1870, and on March 29, 1870, it took over, by assignment and transfer, all of the property, rights, and franchises of the East Side Company, including its grant of public lands by virtue of the Act of Congress of July 25, 1866, and the acts amendatory thereto. By resolution adopted April 4, 1870, this company accepted the grant upon the terms and conditions specified. A copy of the resolution was filed with the Secretary of the Interior April 28, 1870. Ever since such transfer, the latter company has exercised control in the construction of the East Side road and over the grant of Congress to the East Side Company; and the West Side Company has never, since filing its assent to the West Side Grant, claimed or assumed to exercise any control over the affairs, rights or privileges of the East Side Company.

Now, bearing in mind the various Acts of Congress touching these grants, the resolutions of the Legislature of the State, and the proceedings of these several corporations, we will consider the first contention of defendants' counsel, together with the incidental questions presented in support of the demurrer to the bill.

It is stoutly urged that these grants are *in praesenti,* and with reference to the East Side Grant that it became operative, by relation back to the date of the Act of Congress conferring the grant, upon the designation by the legislature of the State of the Oregon Central Railroad Company (East Side) as the one entitled thereto, October 20, 1868. That is to say that, upon that date, the grant became vested in the East Side Company, subject to the conditions imposed for construction, etc., and hence that the amendment of April 10, 1869, requiring the lands granted to be sold to actual settlers, in quantities not exceeding 160 acres to one purchaser, and at a price not exceeding $2.50 per acre, was beyond the power of Congress to enact.

It is undoubtedy true, as argued, that the grant could not become operative until there was a grantee in being, or existence, capable of taking; nor could it become operative until a company was designated by the Legislature of the State as the one entitled to the benefits thereof, as, under the provisions of the Act conferring the grant, it was to the company that should be so designated. The words "That there be, and hereby is, granted," standing alone, unquestionably import a transfer of present title. When read in connection with the terms of the grant, and in relation to the thing granted, they may or may not bear such signification. Where a grantee is actually in existence and qualified to take according to the terms of the law, the words alluded to operate as an immediate and present transfer. But it is otherwise if the grantee is not in existence, or has not qualified himself in pursuance of the terms of the grant to entitle him to that which is offered. Instances of a present transfer are illustrated by the following cases:

Leavenworth, etc. R. R. Co. vs. *United States,* 92 U. S. 733, which related to a grant to the State to aid in the construction of certain railroads, the companies to be aided being named and designated in the Act making the grant; *Schulenberg* vs. *Harriman,* 21 Wall. 44, which was also on a transfer to the State "to aid in the construction of railroads," the holding being that the State acquired a present estate by the terms of the grant; *Lessieur* vs. *Price,* 12 How. 59,—a grant to the State of four sections of land, to be selected, for the purpose of fixing the seat of government thereon; *Railroad Company* vs. *Smith,* 9 Wall. 95—a grant of swamp-lands to the State; and *Michigan Land and Lumber Co.* vs. *Rust,* 168 U. S. 589, also a grant of like lands to the State.

In all such like cases, where identification of the lands in contemplation has been necessary, as by the definite location of the line of railroad which determines the particular sections comprised by the grant, or by the ascertainment of the quality of the land in determination of its swampy character, the grant is said to take effect at the time of the identification or ascertainment, but by relation back to the date of the grant, notwithstanding the grant is denominated as one *in praesenti* and vests a present estate. Where, however, the grantee is not in existence, or is required to do something by which to qualify himself to take under the terms and conditions prescribed, then the grant does not vest a present estate, nor does it become operative except at the time the contemplated grantee comes into being or qualifies himself to receive the designated bounty. As is said by Mr. Chief Justice Waite, in *Hall* vs. *Russell,* 101 U. S. 503, 509:

> "There cannot be a grant unless there is a grantee, and consequently there cannot be a present grant unless there is a present grantee. If, then, the law making the grant indicates a future grantee and not a present one, the grant will take effect in the future and not presently."

In that case the grant, which was in pursuance of the Donation Act of September 27, 1850 (9 Stat. 496), was to a white settler or occupant of the public lands "who shall have resided upon and cultivated the same for four consecutive years," and the distinguished jurist further said:

> "Whenever a settler qualified himself to become a grantee, he took the grant and his right to a transfer of the legal title from the United States became vested. But until he was qualified to take, there was no actual grant of the soil."

It was concluded that there was no grant of land to the settler until he had qualified himself to take by completing his four years of residence and cultivation, and performed such other acts in the meantime as the statute required in order to protect his claim and keep it alive, and that "Down to that time he was an authorized settler on the public lands, but not a grantee." In such a case, therefore, the grant is of the date the settler qualifies himself to take; the court making no declaration concerning the doctrine of relation. The doctrine of relation, while a fiction of law, is potent for subserving the purposes of justice, and is applied only for the security and protection of persons who stand in some privity with the party initiating proceedings for land, and who has acquired the equitable claim or right to the title. By it is meant "that principle by which an act done at one time is considered by a fiction of law to have been done at some antecedent period. It is usually applied where several proceedings are essential to complete a particular transaction, such as a conveyance or deed. The last proceeding which consummates the conveyance is held for certain purposes to take effect by relation as of the day when the first proceding was had." *Gibson* vs. *Chouteau,* 13 Wall. 92, 100. See also *Lynch* vs. *Bernal,* 9 Wall. 315, 325.

Applying this doctrine in a case involving rights acquired under the Timber Act of June 3, 1878, Mr. Justice Brewer, in *United States* vs. *Detroit Lumber Co.,* 200 U. S. 321, 334, says:

> "It is a doctrine of frequent application, designed to promote justice. * * * The ordinary railroad land grants have been grants *in praesenti,* and under them the title has been adjudged to pass,

> not at the completion of the road, but at the date of the grant. (Citing authorities.) A patent from the United States operates to transfer the title, not merely from the date of the patent, but from the inception of the equitable right upon which it is based. *Shepley* vs. *Cowan,* 91 U. S. 330. Indeed, this is generally true in case of the merging of an equitable right into a legal title. Although the patents in this case were not issued until after the sales of the timber, yet when issued they became operative as of the date of the original entries."

If the doctrine of relation were applied in the case of *Hall* vs. *Russell, supra,* we should say that the grant was of the date the settler qualified himself to take with relation back to the date of the initiation of his claim, but not to the date of the enactment of the Donation law.

In the present case the grant was to a company to be organized, and to such a one as the Legislature of the State of Oregon should designate as entitled thereto. It is plain, under the authorities, that no title passed until the organization was perfected and the designation of the legislature made. Nor do I think that the grant became operative until the company filed its assent to the terms and conditions of the Act, as required by section six thereof, as amended April 10, 1869. It was one of the conditions of the Act that the assent be filed, and it was by the observance thereof that the grantee qualified itself to take. Indeed, it was the first act required to be done on the part of the grantee for the initiation of a claim under the grant, and without such an assent no one could know that it purposed availing itself of the benefits of the act conferring the grant. Hence under the doctrine of the cases, the Act of July 25, 1866, could not operate to avert an interest in the grantee until the organization qualified itself by assenting to the terms of the Act in the manner prescribed; and whether the grant then took effect by relation back to the date of the Act or not, Congress was wholly authorized to add such amendments in the meantime as it saw fit. It disturbed no vested right of the grantee by so doing. But, however this may be, there is another reason rendering it competent for Congress to make the amendment. On October 10, 1866, the Legislature of Oregon designated the West Side Company as the organization entitled to the grant, and that company filed its assent to the provisions of the Act of July 25, 1866, with the Secretary of the Interior, July 6, 1867, within the year, and in these respects it would seem that the law had been complied with. But the East Side Company, organized April 22, 1867, set up a claim to the grant, which was evidently brought to the attention of the Legislature of the State, for that body, asuming that it had previously designated a company not in existence as entitled to the grant, designated the East Side Company as the one proper to receive the benefits thereof. This was on October 20, 1868, being more than one year subsequent to the passage of the Act of July 25, 1866. From this time, the West Side Company made no further claim to this particular grant, and later accepted a new grant.

So that the West Side Company was no longer entitled to the benefits of the Act of 1866, and whatever controversy existed between the two companies was thus ended. On June 13, 1869, the East Side Company filed its assent, whereby it accepted all the provisions, rights, privileges, and franchises of the Act of July 25, 1866, and of all acts amendatory thereof, and upon the conditions therein specified. Congress had amended the original act by extending the time for completion of the first and subsequent sections of twenty miles each of the road, and for the completion of the whole. This was prior to the date when the Legislature of the State designated the East Side Company as the one entitled to receive the grant, and had it not been for the amendment, the East Side Company would then have been in default in construction work, and under section eight, the Act would have been rendered null and void. Then followed the amendment of April 10, 1869, extending the time for filing assent, being the one containing the proviso that the lands granted should be sold to actual settlers. There was some reason for passing this amendment. Congress undoubtedly believed that it was necessary so that the Act might be complied with in that respect, and the East Side Company supposed that it was necessary to the acquirement and completion of its rights to the grant, for it soon thereafter signified its assent to the original Act by resolution adopted and duly filed with the Secretary of the Interior. The language of the resolution leaves no doubt as to the purpose of the company. Now, here was a legislative interpretation of the Act of

July 25, 1866, that it was necessary to the acquirement of the grant that the company seeking its benefits should file assent thereto, and for that purpose an extension of time was given. On the other hand, there was a complete assent to the interpretation on the part of the railroad company, thus ratifying, if need be, the Act of Congress in making the extension of time and requiring sale of the lands to actual settlers. This all under the reservation in the original Act, by section twelve, of the authority of Congress to alter, amend, or repeal the same.

The view thus entertained is not without authoritative support. In *St. Paul, etc., Railway Co.* vs. *Greenalgh,* 139 U. S. 19, Congress by an act extended time to the St. Paul and Pacific Railroad Company within which to complete its road, upon condition: "That all rights of actual settlers and their grantees who have heretofore in good faith entered upon and actually resided on any of said lands prior to the passage of this Act, or who otherwise have legal rights in any of such lands, shall be saved and secured to such settlers or other such persons in all respects the same as if said lands had never been granted to aid in the construction of the said lines of railroad." In conjunction therewith the railroad company was required to file a formal acceptance of the conditions in the Department of the Interior for record. Notwithstanding it did not affirmatively appear that any acceptance was ever signed, it was considered, in the absence of such proof, that, as the company continued to assert and exercise ownership over the road, it had in fact accepted the conditions imposed. Hence it was adjudged that a settler upon the lands of the grant prior to the Act extending the time for completion of the road acquired a right superior to that of the railroad company. Thus in effect the amendment of the statute conferring the grant was acceded to by the grantee, and it thereby became bound by it. In this relation the Court says:

> "A mere breach of condition does not of itself work a forfeiture of a grant; some other proceeding must be taken by the grantor to indicate his dissatisfaction with the breach and his intention to exercise his rights to revoke the grant and take possession of the property in consequence thereof. While in this case no specific action was taken by Congress to work a forfeiture of the grant, or by the State, yet the continued possession and use of the property by the company were, in fact, subject to the condition that the rights of settlers upon the lands at the time should not be interfered with, where such settlements had been made in good faith, as was the case in the present instance. And it would be in the highest degree inequitable to allow the company to have all the benefits of the extension of time to complete its road, so as to avoid any forfeiture of its privileges and franchises, without at the same time holding it to the conditions affecting the rights of settlers upon the lands of the company, in consideration of which the extension was made."

So it is here, the railroad company acceded to the amendment by complying specificaly with its requirements, saying nothing of its alleged participation in securing the passage thereof.

It is insisted that the amendment extending the time for completing the road was a waiver on the part of Congress of the necessity for filing an assent, because it was adopted more than one year after the adoption of the main Act, and the amendment makes no mention of the time for filing assent. The answer to this is that Congress did not so treat it, and the railroad company evidently did not so regard it, for both proceeded upon the theory that the assent was yet essential to the earning of the grant. But it is said that at the time of the designation by the Legislature of the East Side Company as entitled to the grant, the company had already assented to the conditions of the Act conferring it, by implication, because it was organized especially for subserving the purposes of the Act, and had then been in the active construction of the road for some time, and therefore that the Act then became operative. It is not alleged in the bill that the company was then engaged in the construction of its road; but, conceding that it was, Congress had made express assent essential by direct terms, and the time of that assent was also made of the essence of the grant, for the grant was made dependent upon the observance of the provision.

Construing the Act as law, however, as it will presently appear it should be construed, which requires that the intendment of Congress shall govern rather than that the law of specific performance of a contract shall be applied, the construction of the Act of Congress, together with its subsequent amendment and the acquiescence of the railroad company therein, again becomes paramount and controlling, and the express assent dominates the grant, so that it does not become operative until that assent is given. See *Rogers* v. *Port Huron & Lake Mich. R. R.,* 45 Mich. 460, 468. As was said in this case, which bears a close analogy to the case at bar as it pertains to the present question:

> "This acceptance was the only act whereby any of these companies was brought into contract relations with the State at all. The law did not assume to force the grant upon any company, and the contract could not bind either party until both assented to the same agreements and conditions."

The clause in the amendment of April 10, 1869, protecting any rights theretofore acquired by any railroad under the original Act, was intended, looking to the history of the legislation, to protect the West Side Company, as at that time there was a controversy between the East Side and West Side companies as to which was entitled to claim the grant. The West Side Company had previously been designated by the Legislature as entitled to the benefits of the Act, and it had furthermore filed its assent, so that, but for the fact that the East Side Company was now claiming the grant, the West Side Company was apparently entitled to it, and while

Congress did not assume to settle the differences between these companies, it did intend to preserve any rights of the West Side Company that it had then acquired. So it was further enacted that the amendment should not be construed as to entitle more than one company to the grant; thus leaving the companies to adjust the matter between themselves. The adjustment came when the West Side Company also obtained a grant. Nor is this case controlled by the case of the *United States* v. *Oregon and California Railroad Company,* 176 U. S. 28, 51, for the stipulation upon which that cause was determined shows a different state of facts from those here presented. That construction is preferred which will give meaning, force and operation to all the clauses of an act, rather than that that one clause should nullify another, unless it be that there is a clear and irreconcilable repugnance between them. It is hardly reasonable to suppose that the clause protecting any company against the impairment of rights accrued was designed in any way to nullify the provision requiring sales to be made to actual settlers, etc., seeing that the latter provision is a part of the same amendment, and follows immediately after the former clause.

The sixth and seventh points of contention will be considered together. It is strongly insisted that the Government has in several ways waived, or has precluded itself of the right at this time to insist upon, a forfeiture of the lands in question:

First, by the issuance of its patents to such of the lands comprised by the grant as have been patented.

Second, by not sooner insisting upon the forfeiture, it being assumed that the Government was in possession of knowledge of certain breaches of the condition requiring the grantee railroad companies to sell to actual settlers.

Third, by the act of Congress of September 29, 1890 (26 Stat. 496), entitled "An Act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads and for other purposes;" and as to the West Side Grant by an Act approved January 31, 1885 (23 Stat. 296), entitled "An Act to declare forfeiture of certain lands granted to aid in the construction of a railroad in Oregon;" and

Fourth, by the Act of March 3, 1891 (26 Stat. 1099), fixing a time beyond which suits to annul and vacate patents issued by the United States may not be instituted, together with the Act of March 2, 1896 (29 Stat. 42), relating to suits by the United States for vacating any patent to lands theretofore erroneously issued under railroad or wagon-road grants, which is a re-enactment, or rather amendatory of the preceding Act.

First, as to the effect of the issuance of the patents. By reference to the bill of complaint it will be noted that patents were issued subsequent to 1871, running to 1906 inclusive, for approximately 2,765,597 acres of the East Side Grant, and of the West Side Grant 128,618 acres. The discussion must proceed with reference to the theory of the Government in seeking to maintain this suit, which is, that the "Settlers' Clause" in the amendment of April 10, 1869, and in the act of May 4, 1870, is a condition subsequent to be observed on the part of the railroad companies; that, if not observed, a forfeiture of the lands would be incurred; and that such provision is a condition attending and upon which the grant was made. Whether the theory can be substantiated in law will be a subject for consideration later.

To recur to the Act of July 25, 1866, the first section relates to the authorization of the railroad company to construct the road; the second to the grant of the lands, the said lands to be applied to the building of the road; and the third section to the grant of the right of way. The fourth section relates to the issuance of the patents. These were required to be issued whenever any section of twenty miles of the road was completed, upon the report of the commissioners showing that the road had been constructed and equipped in all respects as required by the Act. The fifth section prescribes that the grants are made upon condition that the companies shall keep the road in repair and use. The sixth relates to the filing of the companies' assent and the time of the completion of the road, section by section, as specified; and the eighth section, besides providing for forfeiture for non-compliance with specific provisions, authorizes Congress, in case the road is not kept in repair or fit for use after completion, to pass an act to put the same in repair and use, and to appropriate the income for defraying the expense thereof. These comprise all the provisions of the Act which can have any bearing upon the issuance of patents for lands earned under the provisions of the grant.

All public grants are administered by the Land Department, which is a part of the administrative and executive branch of the general Government, and was organized to supervise all the various proceedings by which title to public lands is acquired, from their commencement to their close. Before the issuance of any patent, the Land Department is charged with the duty of ascertaining and determining whether all the conditions of the law entitling it to issue have been complied with. It may be that the issuance depends upon the existence of certain facts, or the performance of certain obligations imposed, or the observance of specific regulations; and in all these the Land Department must ascertain and determine whether the law has been fulfilled so as to entitle the grantee to his final patent under the grant. Within its special jurisdiction, and wherein its function is to conduct inquiry into matters of fact, the Land Department acts judicially, and its findings and judgments, while proceeding within the scope of its powers, are as binding and conclusive as the findings, judgments and decrees of any other special tribunal, and they are unimpeachable and unassailable except by direct proceeding instituted for their correction or annulment. This much for the solemnity and integrity of the acts of the Land Department when in the exercise of its judicial functions. These functions are usually brought into requisition in the consideration and determination relative to the issuance of patents, both under general laws for disposal of the public domain to private persons, and under specific grants for railroad and other purposes. In *Barden* v. *Northern Pacific Railroad,* 154 U. S. 288, 327, a case concerning a grant for railroad purposes, the Court declares that:

> "It is the established doctrine, expressed in numerous decisions of this Court, that wherever Congress has provided for the disposition of any portion of the public lands, of a particular character, and authorizes the officers of the Land Department to issue a patent for such land upon ascertainment of certain facts, that department has jurisdiction to inquire into and determine as to the existence of such facts, and in the absence of fraud, imposition, or mistake, its determination is conclusive against collateral attack."
>
> "The patent of the United States is," it is said, "the conveyance by which the nation passes its title to portions of the public domain."

Smelting Co. v. *Kemp,* 104 U. S. 636, 640.

This under the general laws for disposition of the public lands. And it is further said that:

> "The execution and record of the patent are the final acts of the officers of the Government for the transfer of its title, and, as they can be lawfully performed only after certain steps have been taken, that instrument, duly signed, countersigned, and sealed, not merely operates to pass the title, but is

> in the nature of an official declaration by that branch of the Government to which the alienation of the public lands, under the law, is intrusted, that all the requirements preliminary to its issue have been complied with."

Ordinarily, the patent under a grant for railroad purposes does not operate to pass the title, for that is done by virtue of the grant itself, in which case the patent is rather in the nature of a confirmation of the grant, and in further assurance of title, bearing the force and effect of a solemn certificate that all things have been done and observed entitling the patentee to his grant at that particular juncture.

Says Mr. Justice Field, in *Langdeau* v. *Hanes,* 21 Wall. 521, 529:

> "In the legislation of Congress a patent has a double operation. It is a conveyance by the Government when the Government has any interest to convey, but where it is issued upon the confirmation of a claim of a previously existing title it is documentary evidence, having the dignity of a record, of the existence of that title, or of such equities respecting the claim as justify its recognition and confirmation. The instrument is not the less efficacious as evidence of previously existing rights because it also embodies words of release or transfer from the Government."

The eminent jurist in a later case concerning lands comprised by a railroad grant (*Wisconsin Railroad Co.*

v. *Price County,* 133 U. S. 496), after holding that the grant was *in praesenti,* says, at page 510:

> "The subsequent issue of the patents by the United States was not essential to the right of the company to those parcels, although in many respects they would have been of great service to it. They would have served to identify the lands as coterminous with the road completed; they would have been evidence that the grantee had complied with the conditions of the grant, and to that extent that the grant was relieved of possibility of forfeiture for breach of them; they would have obviated the necessity of any other evidence of the grantee's right to the lands; and they would have been evidence that the lands were subject to the disposal of the railroad company with the consent of the Government. They would have been in these respects deeds of further assurance of the patentee's title, and, therefore, a source of quiet and peace to it in its possessions."

This language was substantially repeated in *Deseret Salt Company* v. *Tarpey,* 142 U. S. 241, 251, where a question was suggested as to the necessity for patents where the title passed by the Act conferring the grant.

Let us ascertain now what the Land Department, in acting in its supervisory character in the administration of these grants, was required to ascertain and determine relative to the lands granted before issuing patents therefor. It must know that the railroad company was

duly incorporated, properly designated by the State Legislature as entitled to the benefits of the Act, and duly authorized to take the grant. It must know that the lands for which patents are sought are within the place or indemnity limits of the grant, and that they have not been reserved, sold, or otherwise disposed of. It must know that the section of twenty miles opposite which the lands are sought to be patented has been completed and equipped in all respects as required by the Act conferring the grant and the amendments thereto, section by section of twenty miles each in its order as the road progresses; and if the entire road was completed and equipped according to law, the Land Department must know that. In this respect the Land Department is aided by the commissioners appointed by the President for the express purpose of ascertaining and making report relative to the facts pertinent to the inquiry. When these facts have been ascertained and determined to exist, then it is incumbent upon the Land Department to issue the patents. The department is required to look no further, nor to concern itself with what the railroad company is bound to do in the future to preserve the integrity of the grant, or to prevent its forfeiture, if such a thing is within the purpose and intendment of Congress.

Now, recurring again to the theory of the bill of complaint that the Settlers' Clause imposes a condition subsequent upon the railroad company for the breach of which a forfeiture would be incurred, it is plain that the Land Department could have nothing to do with any alleged breach of the condition, as by the very order of things such breach would come after the time when it would have passed judgment with relation to the issuance of the patents under the grant. The issuance of the patents, therefore, by the Land Department could be taken neither as a waiver on the part of the Government of the right to insist upon the condition subsequent, nor as adjudication conclusive against the Government's insistence upon the performance of such a condition.

The second ground upon which waiver is predicated is that the Government has not sooner insisted upon forfeiture, knowing that breach of the alleged condition subsequent has been committed. The infractions of the condition referred to consist in the assignment and transfer by the East Side Company of all its rights, privileges, franchises, and property, including the right, title, and interest of the company in and to the granted lands, East Side, to the Oregon and California Railroad Company March 29, 1870, and a like transfer of the West Side Grant October 6, 1880, the execution of certain mortgages noted in the bill of complaint, covering the granted lands, and other conveyances.

As to the transfers to the Oregon and California Railroad Company, these were not intended as a sale and disposition of the lands, but the transactions were designed to work a substitution of the latter company for its predecessors, so that the intention and purpose of Congress, voiced by the enactments conferring the grants, might be carried into effect through its instrumentality, thus conceding to it the rights and benefits to accrue to the original companies, but nothing beyond. Such is the theory upon which the bill of complaint is drawn, and such is clearly the effect of the transfers. The Oregon and California Railroad Company has so treated them, and so has the Government. As it pertains to the East Side Grant, the Oregon and California Railroad Company specifically assented to the Act conferring it, and assented to the grant itself on April 4, 1870, within the extended time for filing assent by the amendment of April 10, 1869. The assent was, however, not filed with the Secretary of the Interior until April 28th. But no importance is attached to that. As to both grants, patents have been issued by the Government to the Oregon and California Railroad Company, and accepted by it as the grantee, and in all transactions since the transfer the Oregon and California Railroad Company has been treated, and it has so treated the relationship with the Government, as the grantee company.

As it relates to the mortgages, if considered as evidencing sales of the granted lands, and other conveyances in alleged violation of the stipulations of the Settlers' Clause, there is nothing stated in the bill from which it can be inferred that the Government assented to them in any way, and hence it can not be considered to have waived the condition.

"Mere indulgence or silent acquiescence is

> never construed into a waiver unless some element of estoppel can be invoked." 29 A. & Eng. Enc. of Law, 1106.

So it is said in *Gray* v. *Blanchard,* 8 Pick. 284, 292:

> "A mere indulgence is never to be construed into a waiver of a breach of condition; and so are the authorities."

See, also, *Trustees of Union College* v. *City of New York,* 173 N. Y., 38; *Howe* v. *Lowell,* 171 Mass. 575; *Carbon Block Coal Company* v. *Murphy et al.,* 101 Ind. 115.

There is certainly nothing contained in the bill of complaint that shows that the Government did more than to remain silent while the Oregon and California Railroad Company was disposing of the lands in violation of the condition prescribed by the Settlers' Clause, if it be a condition, and one of which the Government can avail itself. It did nothing affirmatively or actively by which to mislead the railroad company or cause it rightfully to presume upon the Government's acquiescence. So that the Government has neither waived, nor is it estopped to insist upon, forfeiture for condition broken, if forfeiture may be predicated upon the clause. This will be determined later. Furthermore, it is not believed that the executive officers of the Government can, without express authority from Congress, waive the conditions expressed in a grant emanating from Congress.

The acceptance and use of the road by the Government was contemplated from the beginning, and could not operate as a waiver of a condition subsequent attending the grant.

If it be the purpose to ground the defense upon laches, that cannot be done, for laches is not imputable to the Government.

The other ground of waiver as assigned cannot be supported. The act of Congress of September 29, 1890, *supra,* declares:

> "That there is hereby forfeited to the United States, and the United States hereby resumes the title thereto, all lands heretofore granted to any State or to any corporation to aid in the construction of a railroad opposite to and coterminous with the portion of any such railroad not now completed, and in operation, for the construction or benefit of which such lands were granted; and all such lands are declared to be a part of the public domain."

It has been held in *United States* v. *Tennessee & Coosa Railroad Co.,* 176 U. S. 242, that this act did not operate upon lands opposite completed road, and did not work a forfeiture as to them. It is urged that, under the rule *expressio unius est exclusio alterius,* the act operates as a declaration of waiver of forfeiture as to all lands opposite the completed portions of all railroads. This is equivalent to saying that the effect of the Act was to confirm to the railroad companies all lands opposite completed railroads, or portions thereof. The application sought is a novel one. To say that forfeiture by Congress of lands opposite railroads not constructed is to confirm to the grantees the lands opposite roads constructed, against all contingencies and reserved conditions, whether precedent or subsequent, is carrying the doctrine beyond its purpose and effect. It could not be presumed that Congress, when adopting the general statute applying to all lands under grants lying opposite parts of railroads uncompleted, had in mind all conditions subsequent that might have been annexed to grants where the roads had been completed. The thing is so manifest that it requires no argument; it is sufficient to state the proposition. So Congress could not have intended, by the Act under discussion, to confirm the grants here concerned against any condition subsequent that might have been annexed to them, and, if not intending so to do, the Act could not operate as a waiver or forfeiture of conditions subsequent, if broken. The same is true of the Act of January 31, 1885 (23 Stat. 296), forfeiting the unearned land grant to the West Side Company, although its operation was not general, but related to the forfeiture of a portion of one grant only.

The fourth ground upon which waiver is predicated relates to the statutes of limitation for bringing suits for the annulment of patents, and is rather an objection going to the remedy or the right to institute the suit. The statutes invoked are Section 8 of the Act of March 3, 1891 (26 Stat. 1099), and Section 1 of the Act of March 2, 1896 (29. Stat. 42). The former statute provides:

> "That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this Act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents."

The provision is contained in "An Act to repeal timber-culture laws, and for other purposes," but, being general in its terms, would seem to include patents to railroad companies under grants thereto, as well as other patents issued by the Government. The later statute declares:

> "That suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road grant shall only be brought within five years from the passage of this Act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents, and the limitation of section eight of chapter five hundred and sixty-one of the acts of the second session of the Fifty-first Congress and amendments thereto is extended accordingly as to the patents herein referred to."

The two statutes, read together, put all patents, whether issued in pursuance of railroad grants or otherwise, in the same category, and suits by the Government to cancel cannot be maintained except as thereby provided. But the plain answer to the objection is that this is not a suit to annul the patents issued under these grants. It reaches back of the patents—the purpose being to forfeit the entire grants, so far as the lands are now held by the railroad company, for failure to observe the condition requiring the company to sell to actual settlers. The patents are only evidentiary of the grant; it is the grant that confers title. If the grant is rendered subject to forfeiture for want of the observance of a condition subsequent, the breach whereof may have occurred later than the issuance of many patents, it does not appeal to reason that the forfeiture should be defeated because suits were not instituted to annul the patents within the time fixed by the statute. Should the grant be annulled, the annulment would carry with it, it is true, the avoidance of the patents. But the conditions of the grant must be read into the patents, so the patents cannot stand in the way of the enforcement of such conditions.

The cause which forms the basis of this suit arises out of none of the facts adjudicated by the Land Department, or with which that department had anything to do in issuing the patents; but it arises from the alleged want of the observance of the terms of the grant, whereby the grant itself, it is alleged, has been forfeited. The patents add nothing to the terms of the grant, nor take aught from them.

So I conclude that the Government has not waived its right to maintain this suit for any of the reasons assigned. Nor is it barred of its remedy by virtue of the statutes of limitation relied upon by counsel.

The crucial controversy attending this cause relates to the true intendment of Congress as expressed by the clause contained in the amendment of April 10, 1869, referred to as the "Actual Settlers" proviso, as follows:

> "And provided further, That the lands granted by the Act aforesaid shall be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre."

The Government contends that this is a condition subsequent, subjoined to the original Act, the offset of which is to entail a forfeiture of the lands granted for non-observance of the condition. The defendants, the railroad companies and Stephen T. Gage, contend that it is neither a condition subsequent, an enforceable covenant, nor a trust obligation, it being urged that it is an "unenforceable regulative, directive covenant," leaving it wholly to the good faith and discretion of the grantee whether to observe its terms or not.

Reference to some of the plain rules of statutory interpretation will aid in the solution of the problem. It is axiomatic that the intent of Congress, as a first principle, should be ascertained and enforced.

These grants, says the Supreme Court,

> "are to receive such a construction as will carry out the intent of Congress, however difficult it might be to give full effect to the language used if the grants were by instruments of private conveyance."

Winona & St. Peter R. R. Co. v. *Barney,* 113 U. S. 618, 625.

"There is a presumption," says the same Court, "against a construction which would render a statute ineffective or inefficient or which would cause grave public injury or even inconvenience."

Bird v. *United States,* 187 U. S. 118, 124.

"The first and most elementary rule of construction is, that it is to be assumed that the words and phrases are used in their technical meaning if they have acquired one, and in their popular meaning if they have not, and that the phrases and sentences are to be construed according to the rules of grammar; and from this presumption it is not allowable to depart, unless adequate grounds are found, either in the context or in the consequences which would result from the literal interpretation, for concluding that that interpretation does not give the real intention of the Legislature."

Endlich on the Interpretation of Statutes, p. 4, sec. 2.

In application of this rule the Court says, in *McCluskey* v. *Cromwell,* 11 N. Y., 601:

"If the words are free from ambiguity and doubt, and express plainly, clearly, and distinctly the sense of the framers of the instrument, there is no occasion to resort to other means of interpretation. It is not allowable to interpret what has no need of interpretation."

And so in *United States* v. *Goldenberg,* 168 U. S. 95, 102, Mr. Justice Brewer says:

> "The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of the words and the rules of grammar. The courts have no function of legislation, and simply seek to ascertain the will of the legislator. It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specially provided for, justify any judicial addition to the language of the statute."

In further elucidation, "The province of construction," says the Court in *Hamilton* v. *Rathbone,* 175 U. S. 414, 421, "lies wholly within the domain of ambiguity." And in another case, *Kohlsaat* v. *Murphy,* 96 U. S. 153, 160, that:

> "The controlling rule of decision in applying the statute in any particular case is, whenever the intention of the Legislature can be discovered from the words employed, in view of the subject-matter and the surrounding circumstances, it ought to pre-

> vail, unless it lead to absurd and irrational conclusions, which would never be imputed to the Legislature, except when the language employed will admit of no other signification."

Another plain rule of interpretation is that the purposes of the Act must be gathered from the context and a survey of all its provisions, so that if possible it may stand as a harmonious and consistent whole, every word and sentence bearing an appropriate meaning and signification, rejecting none, unless leading to a manifest absurdity, which it must be presumed that the Legislature never intended.

Rice v. *Railroad Company,* 1 Black 358, 378;

United States v. *Winn,* 3 Sumner 209, 211;

United States v. *Bitty,* 208 U. S. 393, 402.

Furthermore, interpretation must be had in the light of the conditions prevailing at the time of the enactment, and thus by standing in the place of the legislative body its intendment may be gathered by looking through its visions at the things as they then existed, and the probable exigencies that give rise to the measure.

In *Platt* v. *Union Pacific R. R. Co.,* 99 *U. S.* 48, 60, construing the Union Pacific Land Grant by Act of 1862, the Court says:

> "All will concede * * * we are to look at the state of things then existing, and in the light then appearing seek for the purposes and objects of Congress in using the language it did. And we

are to give such construction to that language, if possible, as will carry out the Congressional intentions."

As stated by Mr. Justice Jackson, in *Mobile & Ohio Railroad* v. *Tennessee,* 153 U. S. 486, 502:

> "Legislative contracts, especially, should be read in the light of the public policy entertained and the purposes sought to be accomplished at the time they were made, rather than at a later period when different ideas and theories may prevail."

Other citations to this purpose are unnecessary. I shall later point out some of the attendant and inducing conditions, including the policy and purposes of the Government pertaining to railway grants and donations and sale of the public domain to private settlers, leading in all probability to the legislation in controversy.

In the case of legislative grants, imposing conditions along therewith upon the grantee in relation to the thing granted, the Acts conferring them are to be construed as laws, and the technical rules governing the interpretation of contracts are inapplicable; the single inquiry being as to the intent of the one party—the legislative intendment in promulgating the law.

Says the Court in *Schulenberg* v. *Harriman,* 21 Wall. 44, 62:

> "A legislative grant operates as a law as well as a transfer of the property, and has such force as the intent of the Legislature requires."

So in ***Missouri, etc., Ry. Co.*** v. ***Kan. Pac. Ry. Co.,*** 97 U. S. 491, 497:

> "It is always to be borne in mind in construing a Congressional grant, that the Act by which it is made is a law as well as a conveyance, and that such effect must be given to it as will carry out the intent of Congress. That intent should not be defeated by applying to the grant the rules of the common law, which are properly applicable only to transfers between private parties."

Mr. Justice Brewer, sitting in the Circuit Court, states the rule concisely, yet comprehensively, thus:

> "All legislative land grants are to be regarded, not merely as contracts, but also as laws. As such, they are subject to the same rules of interpretation that govern other laws, and a primary rule is that the intent of the legislator is to be sought, and, when ascertained, controls. The technical rules which govern the interpretation of private contracts must always yield to the single inquiry of the intent of the one party—the Legislature."

St. Paul, M. & M. R. Co. v. *Greenhalgh,* 26 Fed. 563, 568.

See, also:

Platt v. *Union Pacific R. R. Co.,* 99 U. S. 48;
Hall v. Russell, 101 U. S. 503, 509;
Johnson v. *Ballou,* 28 *Mich.,* 378.

And still another rule of construction as it pertains to grants of the public domain to private individuals or corporations is that they should, where there is ambiguity or uncertainty, be construed most favorably to the Government, thus devolving upon the grantee, in whatsoever claim he seeks to maintain against the Government relative to the grant, to show a right clearly defined and about which there can be no controversy or contention. Mr. Justice Harlan, in *Sioux City, etc. Railroad* v. *United States,* 159 U. S. 349, 360, states the principle thus:

> "If the terms of an Act of Congress, granting public lands, 'admit of different meanings, one of extension and the other of limitation, they must be acepted in a sense favorable to the grantor. And if rights claimed under the Government be set up against it, they must be so clearly defined that there can be no question of the purpose of Congress to confer them.' *Leavenworth &c. Railroad* v. *United States,* 92 U. S. 733, 740."

Mr. Justice Field earlier stated the same principle in *Slidell* v. *Grandjean,* 111 U. S. 412, 437:

> "It is also a familiar rule of construction that where a statute operates as a grant of public property to an individual, or the relinquishment of a public interest, and there is a doubt as to the meaning of its terms, or as to its general purpose, that construction should be adopted which will support the claim of the Government rather than that of the individual. Nothing can be inferred against the

State."

Mr. Justice Harlan makes use of this explicit and significant language in *Water Company* v. *Knoxville,* 200 U. S. 22, 33:

> "The universal rule in doubtful cases—this Court said in *Oregon Railway Co.* v. *Oregonian Ry. Co.,* 130 U. S. 1, 26—is that 'the construction shall be against the grantee and in favor of the Government.' As late as *Coosaw Mining Co.* v. *South Carolina,* 144 U. S. 550, 562, this Court said: 'The doctrine is firmly established that only that which is granted in clear and explicit terms passes by a grant of property, franchises or privileges in which the Government or the public use has an interest. Statutory grants of that character are to be construed strictly in favor of the public, and whatever is not unequivocally granted is withheld; nothing passes by mere implication.' "

And so it was held in that case.

See, further:

Hannibal &c. Railroad Co. v. *Packet Co.,* 125 U. S. 260, 271;

Barden v. *Northern Pacific Railroad,* 154 U. S. 288, 325;

United States v. *Oregon &c. Railroad,* 164 U. S. 526, 539;

Northern Pacific Railway v. *Soderberg,* 188 U. S. 526, 534;

Cleveland Electric Ry. Co. v. *Cleveland,* 204 U. S. 116.

Some inquiry now relative to the conditions existing at the time these grants were made, and the history, policy, and purposes of the general Government in its control, administration, and disposition of the public domain.

In the early annals of the United States the public lands were regarded largely as an asset out of which to derive revenue for the needs of the Government. At one time the domain was pledged to the payment of the public debt. The earlier policy was to dispose of these lands to private purchasers, both at public and private sale, but for as much as could be had, and thus to increase the revenues of the Government. Such was the central thought. It may have contemplated that purchasers of large tracts would themselves subdivide their holdings, by disposition to persons desiring to establish homes, and that the lands would eventually be devoted to the needs of the settler. But that was subordinate to the main purpose. Lands once offered at public auction, when no purchaser was secured, became what was known as "offered lands," or lands subject to private entry. These offered lands could thereafter be purchased at the minimum price, being the price fixed below which the Government would not consent that they should be bid in at auction. Through this regulation, purchasers at private entry were enabled to acquire such tracts of land as they were able to pay for, for home or other purposes. They could acquire no other lands from the Government except those that had been previously offered at public auction and failed of a purchaser at a price equal to the minimum or above. Even settlement upon the public domain was discouraged, Congress believing that satisfactory disposition thereof might otherwise be more readily and expeditiously accomplished. Notwithstanding, there was constant and increasing encroachment upon the public domain, and many persons made settlement upon tracts of land of their own selection, cultivating and improving them, and thus fitting and designing them for homes and permanent residence. Based upon such settlement, cultivation and improvement, and by virtue of being the first appropriators, the settlers began to put forth claims to the first right to purchase the tracts involved from the Government, that they might acquire the ultimate title thereto. Later, Congress recognized these claims of right; first in a small way, that is, confining its recognition to settlers in certain localities, and limiting its relief in matter of time. The idea grew, however, until Congress was induced to adopt a general pre-emption law authorizing the entry of lands surveyed, but not open to private entry, as well as of lands which could be bought at private sale. In illustration of the development of the policy, it was enacted May 29, 1830 (4 Stat. 420, 421):

> "That every settler or occupant of the public lands, prior to the passage of this Act, who is now in possession, and cultivated any part thereof in the

> year 1829, shall be, and he is hereby, authorized to enter * * * any number of acres, not more than one hundred and sixty or a quarter-section, to include his improvement, upon paying to the United States the then minimum price of said land."

On April 5, 1832, another statute was passed (4 Stat. 503), declaring:

> "That all actual settlers, being house-keepers upon the public lands, shall have the right of preemption to enter, within six months after the passage of this Act, not exceeding the quantity of one half-quarter section."

Where, by reason of the public surveys not having been made, the settlers were unable to describe their entries, the privileges thus granted were extended by acts of July 14, 1832 (4 Stat. 603), and March 2, 1833 (4 Stat. 663), for a priod of one year after the surveys should be made. These pre-emption acts were revived by Act of June 19, 1834 (4 Stat. 678), and again by Act of June 22, 1838 (5 Stat. 251), and later still by Act of June 1, 1840 (5 Stat. 382). But on September 4, 1841 (5 Stat. 455), a general preemption statute was enacted extending the benefits of settlement without restriction as to time, and providing that, from and after the passage of the Act, every person as therein designated, being the head of a family, etc., who since the first day of June, 1840, had made or should thereafter make settlement in person on the public lands, which had been surveyed prior thereto, and who should inhabit and improve the same and erect a dwelling thereon, was authorized to enter, in the proper land office, any number of acres of such land, to include the residence of the claimant, not exceeding 160 acres, by payment to the United States of the minimum price of such land. This statute expressly authorized any person possessing the qualifications designated to make settlement upon any lands of the Government domain that had theretofore been surveyed. Prior thereto the Government had been adopting legislation designed to legalize what was treated rather as a trespass upon the Government's domain than as an entry and occupation by right, license or privilege. Now the entry is directly permitted, and not only this, but settlement is invited, by throwing open the surveyed portions of the public domain for that express purpose. Says the Court in *Clements* v. *Warner,* 24 How. 394, 397:

> "Later statutes enlarged the privilege (of preemption), so as to embrace lands not subject to sale or entry, and clearly evince that the actual settler is the most favored of the entire class of purchasers."

This case was decided in 1860. In the meanwhile the trend of public thought was toward even greater liberality as it concerned the settler. The public domain was fast coming to be regarded, not as a property—a mere asset from which to derive revenue for the Government's current needs, or with which to discharge its obligations—but as a vast domain, which in large measure shoud be devoted to the settlement and habitation of its citizens, and that those willing to venture out into the frontier and there provide homes for themselves, and thus establish communities and build up the country, were primarily deserving of the Nation's bounty. So the sentiment grew favorable to donating outright small tracts of the public lands to such of the citizens, present and prospective, of the Government as would be willing to make settlement thereon, and show good faith in their purpose to make of such lands their permanent homes by living thereon and improving the same. Ultimately—May 20, 1862 (12 Stat. 392), Congress adopted the Homestead Law, which donates to those who desire to take advantage of its provisions 160 acres of public land, without cost except the fees attending the filings and proofs in the land office, on condition only that they reside upon and cultivate the same for a period of five years. This law grew rapidly in favor, and soon became firmly established in public confidence and esteem as wise and justly beneficient.

It was not until early in the 19th century that Congress began the appropriation of public lands in aid of internal improvements. First the appropriations were of a certain proportion of the proceeds arising from sales of the land, but later they were of the land itself, which in the earlier stages was devoted to the construction of canals, river improvements and wagon roads. This was followed by appropriations to aid in the construction of railroads. The grants were made first to the states, to be by them devoted to the ultimate purposes designed, but following a considerable time later grants were made to railroad corporations incorporated by Act of Congress, and then to a few private corporations. During the fifties, and up to within the year 1866, numerous grants were made to states, covering many millions of acres, in aid of the construction of railroads. Most of these were similar in the manner of disposing of the lands, the states being made the intermediary through which the title was to pass, to insure good faith on the part of the railroad companies ultimately to receive the benefits. Generally the grants were of lands not sold, reserved, or otherwise disposed of. Later acts excluded lands also to which a pre-emption claim or right of homestead settlement had attached, and such as were in the occupancy of bona fide settlers. On July 1, 1862, Congress made a departure by granting lands to a company of its own incorporation, as well as to privately incorporated concerns under general State laws. I refer to the Act creating the Union Pacific Railroad Company and the grant of lands thereto in aid of the construction of its road, including grants to some private corporations. Other grants were made to Federal corporations, namely, one in 1864, another in 1866, and still another in 1871, being the last of all the grants made by Congress in aid of the construction of railroads. Some other grants to private corporations followed those provided for along with the Union Pacific Grant, and among them the grants of lands under consideration here.

The earlier grants were attended with a doubling of the minimum price of lands within the railroad limits; that is, within the exterior boundaries of the grant not covered by it, but required that such lands be offered at public sale before they were subjected to private entry even at that price. But beginning with the Northern Pacific Grant of July 1, 1864, the minimum price was doubled, and private entry was permitted upon such lands whether previously offered or not. Commencing with 1866 the provision was again readjusted, permitting the settler to make entry under the preemption Act, at the price existing at the time of settlement, and of eighty acres under the regulations of the Homestead Act. The grants of 1869, as will be seen by the Acts now under consideration, annexed provisions requiring the lands granted to be disposed of to actual settlers, in quantities not greater than one quarter-section and at a price not above $2.50 per acre. This policy was subsequently adhered to. This latter class of provisions was the outgrowth of a widepsread and persistent agitation among the people of the nation against the further granting of large areas in aid of railroad construction, it being urged that what remained of the public domain should be set apart for occupancy and acquirement by actual settlers and home-seekers, with the privilege and right of acquiring small quantities of land in their own right. The appeal was made as a "measure of justice to the whole American people, as a rich legacy in trust" to the generation then existing and for those to come after, "never to be alienated." The legislation that followed was largely indicative of the reflex of public opinion pertaining to the subject.

Some allusion to the discussions in Congress immediately prior to and at the time these provisions were incorporated with the legislation making grants of public lands to railroad corporations, will not, I think, prove uninstructive; not that what members may have said while the bills were under consideration should be taken as characterizing the legislative intendment in adopting them, but as shedding light upon the conditions, historically, then attending the trend of public thought, and the vital need of such legislation to meet the public exigencies.

The idea was first advanced that, whenever it could be done, the lands proposed to be granted for railroad purposes should be set apart to the states in which they were situated, to be held in trust by them, to be disposed of to actual settlers only, with limitations as to acreage and a maximum price. Then it was urged that such granted lands should be administered by the Secretary of the Interior. This later idea came from Mr. Lawrence, of the House, by way of an amendment to the Denver Pacific bill, as follows:

> "And be it further enacted, That all lands which may be granted or conveyed under or by virtue of this Act or the Acts relating to said railroad company, shall be sold only to actual settlers in quantities not exceeding one quarter-section to any one person, and at a price not exceeding $2.50 an acre; and the Secretary of the Interior shall have power

> to prescribe rules and regulations for carrying this section into effect."

This was defeated. The discussion drifted to another plan, embodied in an amendment offered by Mr. Julian, also of the House, as follows:

> "Provided, That the lands granted * * * shall be sold to actual settlers only, in quantities not greater than one hundred and sixty acres to one purchaser, and for a price not exceeding $2.50 per acre."

Speaking to the amendment, Mr. Julian had this to say:

> "Under proper restrictions I would grant them public lands, and this House has already decided that these restrictions shall be such as I have proposed in the amendment I offered to this bill the other day, namely, that the lands shall be granted on the express condition that they shall be sold to actual settlers only, in quantities not greater than one quarter-section to one purchaser, and for a price not exceeding $2.50 per acre. This will avoid the complete monopoly of the lands, as sanctioned by the old system of land grants, and at the same time devote to settlement and tillage the odd-numbered sections granted, while creating in this way established communities and a local business along the line of the road. This, sir, is the true policy, and the whole land-grant system of our country will be repudiated by the people, and ought

to be repudiated, unless it shall be made to conform to the conditions I have stated."

Another plan was proposed by Mr. Logan, namely, that all lands theretofore granted to aid in the construction of railroads along that portion then unfinished should be subject to entry at the Government Land Office at $2.50 per acre, the money to be deposited in the Treasury of the United States as a sinking fund for the redemption or purchase of the bonds of the company, so far as it might be sufficient therefor. Mr. Lawrence's plan was, in effect, to make the railroad company the trustee of the lands, with administration by the Secretary of the Interior. Mr. Logan's plan was to make the Government trustee, as well as to subject the corpus of the estate to administration through its proper Land Department. Mr. Julian's amendment prevailed finally, and such in effect, by later enactment, became the law attending the grants in question. Other grants took this form of legislation in the main. I speak specifically of the Coos Bay Wagon Road Grant of March 3, 1869 (15 Stat. 340); a revival of grant to the State of Alabama in aid of the construction of railroads (16 Stat. 45) and an Act extending the time for the construction of a railroad under grant to the states of Missouri and Arkansas. As to this latter grant, the amendment was subsequently repealed.

The discussion along the line was varied, and the opinions of members of the two Houses of Congress did not agree as to the effect of the clause. Senator

Vickers was of the view that the grant was made "expressly on condition that the lands are to be sold to actual settlers"; that "If the lands are sold to actual settlers there is no forfeiture. If a portion of the land is sold to actual settlers, the portion unsold will be forfeited to the Government, if that condition is violated." Senator Thurman was doubtful whether the provision would be effective, and suggested, as it then occurred to him, that Congress could not engraft upon the grant a condition or a trust or a covenant of that kind in that indefinite and general way. Senator Williams, of Oregon, said:

> "The lands granted are as open, under the provisions of this bill, to actual settlers as they are under the pre-emption laws of the country. It simply provides that when settlers go upon these lands they may buy them of the company, and the proceeds shall be applied to assist in the construction of the road."

Senators Stewart and Casserly agreed with him in this view.

With this abbreviated review of the conditions and of the policy of the Government with reference to the public domain obtaining prior to and at the time of the adoption of the measures in question, we may proceed to the further discussion of the legislative intendment, considered from a legal standpoint, under the authorities.

There can be no two opinions about the literal mean-

ing of the proviso. The language is so plain and expl
that it bears absolute impress upon the understandi
It constitutes a declaration that the granted lands sh
be sold to actual settlers only, in quantities not grea
than one quarter-section, etc., which is easily comp
hensible, and it would seem that a simple duty or obli
tion was imposed, so simple that anyone could, witho
taking further thought, readily discharge it. But
real question is, Are those provisions couched in su
legal terms as to render them enforceable according
their letter and spirit? In other words, can the gran
be required to do what the language plainly directs sh
be done; and what penalty, if any, is entailed by a failu
or refusal to observe the plain wording of the proviso

An estate upon condition is defined as "one wh
has a qualification annexed, by which, on the happeni
of a particular event, it may be created, enlarged
destroyed. If set forth, the condition is express; a
if it allows the estate to vest, and then to be defeat
in consequence of non-observance of the requirement,
is a condition subsequent."

Blanchard v. *The D. L. & M. R. Co.,* 31 Mi
42, 48.

Some general observations concerning conditio
subsequent may be made in passing. They are n
favored in law, and ordinarily are amenable to str
construction, for the reason that, if not observed accor
ing to their tenor, they entail forfeiture and a destru
tion of the estate. A mere declaration touching t

particular purposes for which the grant it made, or that the grantee is to do or not to do certain things, will not evidence a condition. And, generally speaking, a condition in a grant should be created by apt and appropriate words—words which *ex proprio vigore* import a condition. Furthermore, if there be doubt as to whether the words create a condition subsequent, or a covenant, the breach of which may be compensated in damages, courts will construe them favorably to the latter.

Instances are not wanting, however, where words and terms appropriate to create a condition when read in connection with the context of the grant and the intention of the parties, have been disregarded in their technical sense, and construed as in harmony with a covenant, and conversely, the decision depending upon the real purpose and intent of the parties to the grant, as gathered from the manner and purpose of the conveyance and from the instrument itself, read in its entirety. And it has been held that, although a deed or conveyance contain a clause declaring the purpose for which it is intended the granted premises shall be used, if such purpose will not inure specially to the benefit of the grantor, but is in its nature general and public, and if there are no words in the grant indicating an intent that the grant is to be void if the declared purpose is not fulfilled, such a clause is not a condition subsequent.

11 Cyc. 1050;
Raley v. *Umatilla County,* 15 Or. 172;

Gilbert v. *Peteler,* 38 N. Y. 165;

Rawson v. *Inhabitants of School District No. 5 in Uxbridge,* 89 Mass. 125.

Recurring to the old law, which comes down to us as sound today as it was then, Sheppard's Touchstone (8 Ed. 121) has this upon the subject:

> "Conditions annexed to estates are sometimes so placed and confounded amongst covenants, sometimes so ambiguously drawn, and at all times have in their drawing so much affinity with limitations, that it is hard to discern and distinguish them. Know therefore that for the most part conditions have conditional words in their frontispiece, and do begin therewith; and that amongst these words there are three words that are most proper, which in and of their own nature and efficacy, without any addition of other words of re-entry in the conclusion of the condition, do make the estate conditional, as proviso, *ita quod,* and *sub conditione.* And therefore if A. grant lands to B. to have and to hold to him and his heirs, provided that, or so as, or under this condition, that B. do pay to A. ten pounds at Easter next; this is a good condition, and the estate is conditional without any more words. But there are other words, as *Si, si contingat,* and the like, that will make an estate conditional also, but then they must have other words joined with them, and added to them in the close of the condition, as that then the grantor shall re-

enter, or that then the estate shall be void, or the like. And therefore if A. grants lands to B. to have and to hold to him and his heirs, and if, or but if it happen, the said B. do not pay to A. ten pound at Easter, without more words, this is no good condition; but if these or such like words be added, that then it shall be lawful for A. to re-enter, then it will be a good condition.

"But here note that these words proviso, *ita quod* and *sub conditione,* albeit they be the most proper words to make conditions, yet do they not always make the estate by the deed to be conditional, but sometimes do serve for other purposes; for the word proviso hath divers operations besides; for sometimes it doth serve for and work a qualification, or limitation, and sometimes it doth serve to make and work a covenant only. And then only (being inserted amongst the covenants of the deed) it doth make the estate conditional, when there are these things in the case:

"1. When the clause wherein it is hath no dependence upon any other sentence in the deed, nor doth participate with it, but stands originally by and of itself; 2. When it is compulsory to the *feoffee, donee,* &c. 3. When it comes on the part, and by the words of the *feoffer,* donor, lessor, &c. 4. When it is applied to the estate, and not to some other matter."

A few modern cases will illustrate the significance given technical words appropriate to the creation of a condition, and when their technical sense will be disregarded; also when a condition will be declared even where no technical words adapted to its creation attend it.

In *Gray* v. *Blanchard,* 8 Pickering 283, a deed contained the following provision: "Provided, however, this conveyance is upon the condition, that no windows shall be placed in the north wall of the house aforesaid, or of any house to be erected on the premises, within thirty years from the date hereof." It was objected to this conveyance that the words quoted did not constitute a condition, but evidenced a covenant only. Answering this objection, the Court, speaking through Parker, Chief Justice, says:

> "The words are apt to create a condition; there is no ambiguity, no room for construction; and they cannot be distorted so as to convey a different sense from that which was palpably the intent of the parties. The word 'provided' alone may constitute a condition, but here the very term is used which is often implied from the use of other terms. 'This conveyance is upon the condition,' can mean nothing more nor less than their natural import; and we can not help the folly of parties who consent to take estates upon onerous conditions, by converting conditions into covenants. It would be quite as well to say that the words mean nothing, and so ought to be rejected altogether. No authority has been cited which bears out this suggestion; indeed

the authorities are all against it."

It was further insisted that, because there was no clause of re-entry for breach of condition in the deed, the provision was not strictly a condition going to the forfeiture of the estate, but the Court here also held to the contrary, saying:

> "The law seems to be clear the other way. A clause of re-entry is not necessary to make a condition. Proviso, *ita quod, sub conditione,* make the estate conditional. Com. Dig. Condition, A 2. Other words, such as *si, si contingat,* do not make a condition, which will work a forfeiture, without clause of re-entry. Lit. §331; Shep. Touch. 121."

In the case of *Hooper* v. *Cummings,* 45 Maine, 359, it appears that one Jonathan Cummings conveyed to Nathan Woodbury and others, a committee appointed to build a meeting-house in the town, certain acreage, and that in the deed, succeeding the covenants, were these words: "Providing the said committee and proprietors fence the said land and keep the same in repair." Deciding as to the effect of these words, the Court says:

> "We may assume that the proviso in the deed created a condition subsequent, and in this we are sustained by most, if not all, the authorities, ancient and modern; notwithstanding it is to be construed strictly and most strongly against the grantor to prevent, if possible, a forfeiture of the estate. 'If the word proviso be the speaking of the grantor, *feoffer,* donor, &c., and obliges the grantee, &c.,

> to any act, it makes a condition, in whatever part of the deed it stands; and, though there be covenants before or after, is not material.' 3 Com. Dig. 84 (Condition)."

Sharon Iron Co. v. *City of Erie,* 41 Pa. St. 341, is a case where the City of Erie conveyed by deed a piece of realty to the Sharon Iron Company, subject to the conditions, provisions, and stipulations of certain resolutions. These resolutions provided, first, "That the alienees shall, 'within one year, erect a breakwater in front of each of said lots, under the direction of the city councils.' Second, That they shall 'within two years, erect a good and substantial bloomery thereon, or within the limits of the city.' " It being alleged that the iron company had failed to comply with these provisions, the city brought ejectment to recover the lots. The bloomery was not constructed as required by the resolutions, and the question came up as to whether the grantees had not forfeited the property by reason of the non-observance of the condition. Speaking to that subject, the Court says:

> "The clause in the original resolution incorporated into the deed was a condition, not a covenant, and 'where the language imports a condition merely, and there are no words importing an agreement, it cannot be enforced as a covenant, but the only remedy is through a forfeiture of the estate.' " Quoting from Selden J., in *Palmer* v. *Fort Plain and Cooperstown Plank Road Co.,* 1 Keenan 389.

In *Wilson et ux.* v. *Wilson,* 86 Ind. 472, a deed was executed by father to son upon the consideration of a certain covenant contained in a separate instrument executed by the son. Upon these facts it was held that the deed was upon condition, the Court saying:

> "There was no other valuable consideration for the deed, and, unless the instrument can operate as a defeasance, it is difficult to see how, in respect to some, at least, of its terms, it could be enforced, or be made effective in any way. It may be said that the covenants contained in the writing are personal covenants merely, but that cannot affect the conclusion that the deed was made on condition that they be faithfully kept and performed."

In *Oliver Hayden et al.* v. *The Inhabitants of Stoughton,* 5 Pick. 528, a devise of real estate to a town for the purpose of building a schoolhouse, "provided it is built within 100 rods of the place where the meeting-house now stands," was held to be upon a condition subsequent.

Says Lyon, Judge, in *Horner* v. *Chicago, Milwaukee & St. Paul R'y Co. et al.,* 38 Wis. 165, 173:

> "Although there are technical words which, if used in a conveyance, unmistakably create a condition, yet the use thereof is not absolutely essential to that end, and a valid condition may be expressed without employing these words."

And again:

> "It is not essential to a valid condition that, in case of a breach thereof, a right of re-entry be expressly reserved in the deed, or that it be expressed therein that the estate of the grantee shall terminate with a breach of the condition."

This was a case where the deed conveyed two parcels of land. After the description of the first parcel, and referring to it by the words "The aforesaid piece or parcel of land hereby conveyed to the party of the second part only for depot and other railroad purposes," and after description of the other parcel, which in terms is granted for a railway, the deed contains these words: "Both of said pieces or parcels being granted solely for said road purposes." The Court, speaking with reference to these clauses, says:

> "The words 'only' and 'solely' are words of restriction or exclusion. As used in this deed, their effect clearly is to prohibit the grantee from using the lands for any other than the specified purposes."

So it was said by Page, J., in *Kilpatrick* v. *Mayor of Baltimore,* 48 Am. St. 509, 511:

> "Technical words are not absolutely essential to create a condition, nor, on the other hand, does their use necessarily raise one; such words may be controlled by the context of the instrument in which they are used, so that sometimes they work a limitation and condition, and sometimes a covenant or a trust only."

In this case the deed was to the "Mayor and City

Council of Baltimore and its successors," with *habendum* "To have and to hold * * * unto the Mayor," etc., "forever, as and for a street to be kept as a public highway." And it was held not to have been made upon condition.

Lurton, Circuit Judge, now a Justice of the Supreme Court of the United States, gave utterance to the principle in *Board of Commissioners* v. *Young,* 59 Fed. 96, 104. The deed under consideration contained neither technical words importing a conditional estate, nor any clause of re-entry. "Yet," says the distinguished jurist, "a condition subsequent may be so strongly and clearly implied from the whole tenor of the deed as to demand recognition, though not expressed in technical language." The deed in that case, however, was ultimately held not to have been executed upon condition.

In *Stanley* v. *Colt,* 5 Wall. 119, 166, the Court says:

> "It is true that the word 'proviso' is an appropriate one to constitute a common-law condition in a deed or will, but this is not the fixed and invariable meaning attached to it by the law in these instruments. On the contrary, it gives way to the intent of the parties as gathered from an examination of the whole instrument, and has frequently been thus explained and applied as expressing simply a covenant or limitation in trust."

Again, in *Atlantic & Pacific Railroad* v. *Mingus,* 165 U. S. 413, 428, Mr. Justice Brown says:

> "It cannot be supposed that Congress intended

to vest a title in the railway company to this enormous grant of lands without contemplating that the Government might in some way reacquire it in case of a failure of the company to comply with the conditions of the grant. No express provision for a forfeiture was required to fix the rights of the Government. If an estate be granted upon a condition subsequent, no express words of forfeiture or reinvestiture of title are necessary to authorize the grantor to re-enter in case of a breach of such conditions."

It is not unusual for the Crown or the Government to annex conditions subsequent to grants, and such grants are subject to forfeiture for failure to observe the conditions imposed, as private grants may be forfeited unless the breach is subsequently waived by Act of the grantor.

United States v. *Arredondo*, 6 Pet. 691;
United States v. *Wiggins*, 14 Pet. 334;
United States v. *Repentigny*, 5 Wall. 211.

Indeed, it is a thing quite common in some form attending grants in aid of railroads and other internal improvements.

Two authorities may now be noted which have discussed conditions, one of similar import and the other identical with these under consideration. The first is *Nichols* v. *Southern Oregon Co.,* 135 Fed. 232, a case decided in this Court. By Act of March 3, 1869 (15 Stat. 340), a grant of lands was made to the State of

Oregon in aid of the construction of a military wagon road, containing the following provision:

> "Provided, further, that the grant of land hereby made shall be upon the condition that the lands shall be sold to any one person only in quantities not greater than one quarter-section, and at a price not exceeding $2.50 per acre."

The defendant company succeeded to a portion of these lands, and the plaintiff sued to require it to convey to him a tract of 160 acres, after tendering the price thereof at the rate of $2.50 per acre, claiming that under the clause above quoted he was so entitled to purchase the land, and that the defendant was obligated to convey to him. Judge Bellinger, in disposing of the controversy, says:

> "The grant was not a law for the sale of the granted lands. It did not offer them for sale. That was left to the State, subject to restrictions as to the price at which they should be sold and the quantity that should be sold to any one person. These restrictions were mere incidents of the grant, mere regulations that the State was required to observe in selling the granted lands, at such time after they were earned as the State should conclude to sell them. The object to be accomplished in no wise depended upon them. Whatever rights existed in respect to these restrictions belong to the United States. No interest was created in the complainant. He is not a beneficiary in the grant, and he has

> no standing to complain that the State has violated its conditions in the manner in which it has disposed of the granted lands. That is a matter that can only be taken advantage of by the United States. Furthermore, above 30 years ago Congress authorized patents to issue to the State or to any corporation or corporations to which it had transferred its interest, and patents have been issued to the State's grantees in pursuance of that law. It is not necessary to consider whether this Act was a waiver by Congress of the conditions subsequent in the grant."

Three things seem to have been decided, namely, that the restrictions imposed by the clause quoted were mere incidents or regulations that the State was required to obey; that whatever rights vested in respect to such restrictions belonged to the United States; and that a third or outside party was not a beneficiary to the grant; and, incidentally, the conditions are spoken of as "conditions subsequent."

The other case is *Warrior River Coal & Land Company* v. *Alabama State Land Company,* 154 Ala. 135. The action was in ejectment, and involved a tract of land included in a grant by Congress to the State to aid in the construction of railroads. The grant, which was made by Act of June 3, 1856 (11 St. 17), seems to have lapsed in part, and a revival was accorded by Act of April 10, 1869 (16 St. 45), containing a clause identical with the one here under consideration amendatory of the Act of July 25, 1866. Speaking with reference to the clause, the Court says:

> "The legal title to the granted lands having vested in the State, and the beneficial interest in the railroad company having become individualized as to the land and the companies, respectively, the land here in controversy included, by the performance of all conditions precedent erected by the National Grant, the limitation quoted from the Act was, at most, a condition subsequent, a violation of which rendered the estate in the particular instance amenable to forfeiture by the appropriate action of the granting government, and by that only."

There is here the intimation that the clause might create a condition subsequent, but that if it did, the Court was of the view that the forfeiture could be insisted upon only by the general Government.

Without for the present concluding whether the provisions in question constitute a condition subsequent, the logical order requires that we first determine the contentions of cross-complainants and interveners.

The position of cross-complainants is that these provisions—the Settlers Clause—devolved upon the grantee an executory trust to be administered by it, and that when any citizen, qualified to take and hold lands in his own right, became an actual settler upon the land selected by him, he then became qualified as a *cestui que* trust, to whom the grantee was bound to sell at the rate of $2.50 per acre, and in due time to convey, and that equity will interpose its jurisdiction to enforce the trust. Under this theory, it is further asserted that it makes no difference that a *cestui que* trust was not in being and qualified as such at the time of the grant, but that the Act has in contemplation any such qualified person, who may at any time make settlement and, with a tender of the purchase price, demand a deed.

A word as to the signification of the term "covenant," before proceeding to the inquiry thus suggested. It is "An agreement between two or more persons, entered into by deed, whereby one of the parties promises the performance or non-performance of certain acts, or that a given state of things does or shall, or does or shall not, exist." Bouvier's Law Dictionary.

"In common parlance, however, the term is applied to any agreement whether under seal or not." 11 Cyc. 1043.

No specific or technical words are necessary to the creation of a covenant, nor is any particular or set form of expression, it being sufficient if, from the whole agreement, there appears upon any part of it an obligation or undertaking to do or not to do a particular thing or things. As stated in Sheppard's Touchstone, 161:

> "And there needs not in this case formal and orderly words, as covenant, promise, and the like, to make a covenant on which to ground an action of covenant; for a covenant may be had by any other words; and upon any part of an agreement in writing, in what words soever it be set down, for any-

> thing to be or not to be done, the party to or with whom the promise or agreement is made may have this action upon the breach of the agreement."

The case of *Hale* v. *Finch*, 104 U. S. 261, is instructive upon the subject. The controversy was relative to the proper construction of a bill of sale of a boat which recited that the sale was upon express condition, etc., it being claimed that there was liability in covenant. The bill of sale was not signed by the vendee, nor was it necessary in the form in which it was drawn for him to sign it. The Court, after observing that "Words of proviso and condition will be construed into words of covenant, when such is the apparent intention and meaning of the parties," quoting from 2 Parsons, Contracts, 23; and that "There are cases in which the instrument to be construed was held to contain both a condition and a covenant; as, 'If a man by indenture letteth lands for years, provided always, and it is covenanted and agreed between the said parties, that the lessee should not alien,' " which was adjudged to be " 'a condition by force of the proviso, and a covenant by force of the other words,' " citing Co. Litt. 203 b; and after further observing that there was in terms a covenant to defend the title of the boat, which was immediately followed by language implying an agreement that the sale was upon the express condition that neither the boat nor the machinery should be used within a prescribed time upon certain waters, held that, the vendor having expressly and the vendee impliedly agreed that the sale was upon an express condition stated in such form as to preclude the idea of personal responsibility upon the part of the vendee, effect should be given the intention thus distinctly declared, and hence that the writing created a condition and not a covenant.

In general a trust is "an obligation arising out of a confidence reposed in one who has the legal title to property conveyed to him, that he will faithfully apply and deal with such property according to the confidence reposed."

28 Am. & Eng. Enc. of Law, 858.

So, "For the creation of a valid trust, three circumstances must concur; first, a definite subject-matter within the disposal of the settlor; second, a lawful definite object to which the subject-matter is to be devoted; third, clear and unequivocal words or acts, devoting the subject matter to the object of the trust."

28 Am. & Eng. Enc. of Law (2 Ed.) 865, 866.

But "The declaration of trust, whether written or oral, must be reasonably certain in its material terms; and this requisite of certainty includes the subject-matter or property embraced within the trust, the beneficiaries or persons in whose behalf it is created, the nature and quantity of interests which they are to have, and the manner in which the trust is to be performed. If the language is so vague, general, or equivocal, that any of these necessary elements of the trust is left in real uncertainty, then the trust must fail." 2 Pomeroy's Eq. Jr. §1009.

As it is with a covenant or condition subsequent, no particular form of words is essential whereby to create a trust. It depends wholly upon the intention of the person who it is avowed has made the settlement, and the intention is to be ascertained also, as in the other forms of obligation or condition, from all the words attending the instrument by which the relationship is claimed to have been established. So the inclination of construction, where it is doubtful whether a trust has been created or a condition subsequent has been imposed, is toward the trust relationship.

As to the Settlers' Clause, there is absolute certainty as it respects the subject-matter. It consists of the lands granted. But what is to be said of the beneficiaries, and of the nature and quality of interest each or any of them is to have?

It should be borne in mind that in most jurisdictions a marked and vital difference is maintained between ordinary and charitable trusts, as it pertains to the essentiality of the element of identity and certainty of the *cestui que* trust. Those jurisdictions which do not recognize the distinction hold that charitable trusts are governed, as it respects this element, by the same rules as are applicable to ordinary trusts. In the ordinary trust the *cestuis que* trust must not only be definitely and specifically designated so that there can ordinarily be no uncertainty as to their identity, but they must be capable of taking the estate or property which is the subject of the trust. They may not be in *esse* at the time of the creation of the trust, but there must not be uncertanty as to who is the beneficiary, whoever it may or shall be, whether he is in existence, or is to come into being at some future time. If there be a valuable consideration to support the trust, the Courts are solicitous to enforce it, to subserve the interest of the parties; but if the *cestui que* trust is not named, or so designated that he cannot be identified, the Courts are powerless to give effect to the trust, however clearly it may be created in other respects. Says the Court in *Levy* v. *Levy,* 33 N. Y. 97, 107:

> "If there be a single postulate of the common law, established by an unbroken line of decisions, it is, that a trust without a certain beneficiary who can claim its enforcement, is void, whether good or bad, wise or unwise."

On the other hand, it is not at all essential either that the beneficiaries of a charitable trust or use be ascertained, or any definite number thereof, for indefiniteness is said to be a characteristic of a legal charity (*Russell* v. *Allen,* 107 U. S. 163), or capable of taking the legal title to the estate bestowed in trust. Says Mr. Beach:

> "In a private trust, if the beneficiary or beneficiaries are not definitely and positively named, the trust fails on account of indefiniteness. But in a charitable trust, the beneficiaries need not be definitely named, and even where there is no adequate designation of a *cestue que* trust, the trust will be enforced in equity if the intention of the settlor can be ascertained beyond a reasonable doubt."

Beach on Trusts and Trustees, §322.

See, further, §55 same work, and §§66, 95, Perry on Trusts.

For emphasis of the essentiality respecting certainty as to the beneficiary, I will make further reference to the authorities, and in doing so will cite from some of the jurisdictions which do not recognize the distinction noted between the two classes of trusts. The force of the authorities is not weakened because the distinction is not observed. In *Weaver* v. *Spurr,* 56 West Va. 95, 105, it is said:

> "There cannot be a trust without a *cestui que* trust; and if it cannot be ascertained who the *cestui que* trust is, it is the same thing as if there were none."

In an earlier case from the same State (*Brown* v. *Caldwell,* 23 W. Va. 187) a grant of land, upon trust that the trustee "shall at all times permit all the white religious societies of Christians and the members of such societies to use the land as a common burying-ground and for no other purpose," was held to be void for want of certainty as to the beneficiaries. Speaking of this alleged trust, the Court said:

> "It is difficult to conceive of anything more vague, indefinite and general in its character. The societies here designated are neither local nor fixed. They in fact embrace the whole Christian world, and are not only indefinite but unascertainable."

In *Stonestreet* v. *Doyle,* 75 Va. 356, a devise of land "to build a schoolhouse for the purpose of a free school, and further extending the education of poor children," was held inoperatvie and void for uncertainty as to the beneficiaries.

So it was held in *Heiss, Executor, etc.,* v. *Murphey et al.,* 40 Wis. 276, 292, that a devise "to the Roman Catholic oprhans," and empowering the Roman Catholic Bishop to sell the property and "use the proceeds for the benefit of the Roman Catholic orphans," was void for uncertainty in the description of the beneficiaries; the Court saying:

> "There are no ascertainable beneficiaries, either as a class or individuals, and therefore the trust cannot be effectually carried out."

A bequest as follows: "I leave the whole of said fund in the hands of my executor, to be by him applied to the support of missionaries in India," was held void in *Board of Foreign Missions* v. *Mc-Master,* Fed. Cas. No. 1586, because of uncertainty as to beneficiaries, the Court saying:

> "But whether there be a competent trustee or not, if the *cestui que* trusts are not clearly ascertained by the will, the devise or bequest is void."

So a bequest "to some disposition thereof which my executors may consider as promising most to benefit the town and trade of Alexandria, leaving the same entirely to their disposition of it, in such manner as appears to them promises to yield the greatest good," was held void in *Wheeler* v. *Smith,* 9 Howard, 55, the Court remarking, in the course of the opinion, that:

> "A trust is vested in the executors, but the beneficiaries of the trust are uncertain, and the mode of applying the bounty is indefinite."

Authorities are cited by counsel for interveners which are apparently oposed to the holding of these cases, but when examined with discrimination it will be found that they are not. *Perin et al.* v. *Carey et al.,* 65 U. S. 465, and *Jones* v. *Habersham,* 107 U. S. 174, are fair illustrations of all. These two cases are based upon devises or bequests to charity, and it is a well-established principle of law that their validity is dependent upon the laws and the judicial interpretation thereof within the State; where the lands lie if real property be the subject, or where the testator had his domicile if personal property. And the Federal courts are controlled as well thereby. It was explicitly so held in the case last cited. That case arose in Georgia, and was declared to be subject to the laws of that State touching charitable uses, which are similar in purpose to the statute of 43 Elizabeth upon the subject. It is declared by such laws that "A Court of Chancery may, by approximation, effectuate the purpose (of the testator) in a manner most similar to that indicated by the testator." In a sense the *cy pres* doctrine is made to apply in such a case. The trust to charity was therefore sustained by reason of the controlling force of the local law. But in the case of *Wheeler* v. *Smith, supra,* coming from Virginia, where neither the statute of 43 Elizabeth nor any similar statute obtains, the *cy pres* doctrine was not applied, the Court saying that:

> "In Virginia, charitable bequests stand upon the same footing as other trusts, and consequently, require the same certainty as to the objects of the trust and the mode of its administration."

While in the case of *Perin et al.* v. *Carey et al., supra,* the State of Ohio being without a statute of charities, it was held that the courts of equity in that State had adopted the doctrine founded upon the statute of 43 Elizabeth, and that the doctrine was controlling, both locally and in the Federal courts. Such was the principle announced in the case of *Vidal* v. *Girard's Executors,* 2 How. 127.

It is a principle that in equity the absolute interest is vested in the *cestui que trust,* and the trustee is but an instrument for effectuating the trust, and, where executory, for carrying it into effect. Equity will not allow the trust to fail for want of a trustee. But if there is no *cestui que* trust susceptible of identification, the trust, other than for charity, is void absolutely, and equity is powerless to aid it in any way.

There is also a distinction between executed and executory trusts, but it does not consist in the fact that one is completely wound out and the other is in process of being carried into effect. It depends rather upon the manner in which the trust is declared. An executed trust is one wherein the limitations and conditions attending it are fully and perfectly declared. An executory trust is one where the limitations are imperfectly declared, the intent of the creator being expressed in general terms, leaving the manner in which his intent is to be carried into effect substantially in the discretion of the trustee. The distinction has been illustrated by the act of a testator, as follows: "Has the testator been what is called, and very properly called, his own conveyancer? Has he left it to the Court to make out from general expressions what his intention is, or has he so defined that intention that you have nothing to do but to take the limitations he has given to you and convert that into the legal estate?"

Beach on Trusts and Trustees, §59.

See further

Nicoll v. *Ogden et al,* 29 Ill. 323, 385;

Neves v. *Scott,* 9 How. 196, 211.

When, therefore, counsel for cross-complainants urge that Congress has created an executory trust, with the railroad company as trustee, they must mean that there was left, through the want of precisely defined limitations, something of discretion in the trustee as to the manner in which the trust was to be carried into effect. If not this, it is perfectly plain that the actual settler is not vested with the equitable estate simply by the terms of the Act. If he were so vested, there would be nothing left for the trustee to do but to convey, on receipt of the $2.50 per acre, and that would be an executed trust. But even upon the theory of cross-complainants that the settler becomes a *cestui que* trust upon making settlement upon a tract of 160 acres of land and the tender of the price, there would be nothing left for the trustee to do but to convey the land. The trust would then be an executed one, and not executory. The question as to the nature of the trust, if one exists, is not material, but the discussion of it will serve to illumine the primary question touching the intendment of the Settlers' Clause. If there is nothing of a discretionary character for the railroad company to do in the disposal of these lands, nothing to settle as to when it shall convey, or when or in what manner it will convey, or for what price, the Act or grant executes itself, and the company is but an automaton, with nothing to do but to convey to actual settlers, whoever they may be, which would constitute a mere passive or dry trust, were it not that the trustee has a beneficial interest in the property.

Now, there is in this case no semblance of a charitable trust—not the remotest purpose manifest of bestowing any charitable gift or devise. Indeed the "actual settlers" designated can claim nothing, nor any particular tract of the grant, as a charity. Nor do I understand that they found their demand upon any such claim. They are standing on the law as creating a trust, with themselves as beneficiaries. Could it be more uncertain who it was intended the beneficiaries were to be, pursuing the theory that the grant created a trust? True, actual settlers may be termed a class of individuals who have set up and established homes upon specific tracts of land; but this is a very large class, and the term is very broad. The bounty, however, is not to the class as a whole, but to such actual settlers as may establish themselves upon some tract of this grant not exceeding 160 acres in area. There could be no actual settler until an actual habitation was established upon some specific parcel of this land. Logically, no one is a *cestui que* trust under the theory until and unless he becomes such a settler. This is a palpable demonstration of the uncertainty as to the beneficiary, for who, of the vast concourse of humanity, is going to come and claim the right and privilege of settling upon the land? Beyond this, the nature and quantity of interest is not specific or definite. The declaration of the law is—I call it a law because it is to be construed as a law as well as a grant or contract—that the grantee shall sell in quantities not greater than one quarter-section to one person. If this be a maximum limitation, it is surely not a minimum limitation, and the grantee might sell to one purchaser less than one quarter-section and be within the law; and so there is palpable uncertainty as to the amount of land each settler is entitled to demand under the supposed trust, he being the *cestui que* trust. It is clear to my mind that the theory of a trust must fail, because of uncertainty in these particulars, namely, as to the *cestui que* trust, and as to the quantity of interest he is entitled to receive.

Looking at the matter in all its phases, the Act lacks the elements of a trust whereby the railroad company is constituted a trustee for the administration of the granted lands, in any specific quantities, for the benefit or use of any definite or certain beneficiaries.

In arriving at this conclusion, I have not overlooked

the cases, such as *Rice* v. *Railroad Company,* 1 Bla
358; *Mills County* v. *Railroad Companies,* 107 U.
557; *United States* v. *Des Moines, etc., Co.,* 142 U.
527, and *Ashuelot Nat. Bank* v. *City of Keene,* 9 L.
A. (N. S.), 758, cited and relied upon by counsel f
cross-complainants.

The Rice case was concerning a grant of land to t
Territory of Minnesota to aid in the construction of
railroad, and it was held that the territory took the la
in trust, without any beneficial interest therein, for di
posal, and application of the proceeds to a specified pu
lic improvement. There was no *cestui que trust,* a
none could enforce the trust except the general Gover
ment, being the grantor.

The Mills County case involved the construction
the proviso to the second section of the Swamp La
Act of September 28, 1850, requiring that the procee
of the lands shall be applied exclusively, as far as nece
sary, to the purpose of reclaiming the same by leve
and drains, and it was held that it imposed an obligatio
resting upon the good faith of the states. The State
Iowa granted its swamp-lands to the respective counti
in which they were situated. A conflicting claim aro
between Mills County and the B. & M. R. R. Co. In t
litigation Mills County insisted that the lands in su
had been disposed of by the State contrary to the pr
viso above alluded to, and it was not only considered th
the State was accorded a discretion as to the manner
disposal of such lands, but it was further determined th

as to whether the State had faithfully performed its duty under the Act of Congress in the disposal of its swamp-lands to the counties was a question between the United States and the State and that the obligation imposed constituted neither a trust following the lands, nor a duty which private parties could enforce as against the State.

In the case of *United States* v. *Des Moines, etc., Co.,* there was a grant to the Territory of Iowa, to aid in the improvement of the Des Moines River, and while the grant was not declared by the Court to be a trust, it was so treated; the territory, afterward the State of Iowa, becoming the trustee to see that the purposes of the grant were properly executed. No *cestui que* trust was intended, but the grant was to the territory, to be appropriated by it to the promotion of a specific improvement.

In *Ashuelot Nat. Bank* v. *City of Keene,* the Court construed the deed, with its accompanying contract, as a grant in trust rather than upon condition, considering all the terms of both instruments, in view of the circumstances under which they were executed. The transaction was, in effect, a conveyance for a charitable use. The city took no beneficial interest in the property, but took it upon trust, to devote the same to public use. The action was not by one claiming as a *cestui que* trust, but by the heirs of the grantor.

So it would seem that these authorities do not support the contention claimed for them.

This brings us to the contention made on the part of the intervenors, which is, that the grant is both a law and a contract—a contract as well as a law; that being such, there is a standing and continuing offer, to which the grantee is a party, to whomsoever may desire to become an actual settler and to purchase a tract of the granted lands not exceeding 160 acres; and that any such person, by a declaration of his purpose and a tender of the purchase price, namely $2.50 per acre, brings himself into relation to the contract, thus making himself a party thereto, and is entitled to the rights of a contracting party to enforce a conveyance to him from the grantee.

In this connection, it is strenuously urged that, by declaring his purpose to become an actual settler and tendering the purchase price, the intending purchaser acquires a vested right in the property, which not only the grantee but the Government also is bound to regard, and of which he can not be divested without his consent, thus entitling him in due course to a proper conveyance. This position is based upon a supposed analogy to the acquirement of vested rights against the Government by pursuing the acts and regulations established for the acquirement of pre-emption and homestead claims to tracts of the public domain. It is therefore well to determine first whether the analogy exists, and, second, whether a vested right can be acquired in some other way.

It is well settled, by a uniform line of decisions, that a settler under the pre-emption statutes of Congress does not acquire a vested right as against the general

Government to appropriate the lands for other purposes, until he has done all that the law requires him to do, including the payment of the purchase money, to entitle him to a patent. When he has performed all these acts, observed all the requirements of the law, and nothing remains to perfect his title but the issuance of a patent, he becomes the equitable owner of the land settled upon, and, being the equitable owner, he is said to have acquired a vested right, of which he can not be divested even by the Government, much less by private parties in any capacity. One of the earlier cases upon the subject is ***Frisbie* v. *Whitney*,** 9 Wall. 187. It arose in the following manner: Certain supposed grants by the Mexican Government to one Vallejo, comprising a large tract of land in the State of California, were declared void by the Supreme Court. The land thereupon became public domain of the United States. Many persons were at the time occupants of the land, claiming right and title through Vallejo. In order to protect these occupants, Congress, on March 3, 1863, passed an Act for their benefit. Frisbie was an occupant and claimant under this Act. Whitney attempted to enter upon the same land, and claimed settlement thereon. This was prior to the Act of 1863. After his settlement he tendered to the land officers his declaration of intention to occupy and cultivate the land as a pre-emptioner, but was refused. The judgment of the Court followed on these facts, Whitney claiming that he had thus acquired such a right or interest in the land as could not be divested by the Government. After reference to the requirements of the pre-emption acts for acquiring public lands, the Court said:

> "When all these prerequisites are complied with, and the claimant has paid the price of the land, he is entitled to a certificate of entry from the register and receiver; and after a reasonable time, to enable the land officer to ascertain if there are superior claims, and if in other respects the claimant has made out his case, he is entitled to receive a patent, which for the first time invests him with the legal title to the land."

The Court quotes as authoritative, and with approval, the opinion of Attorney General Bates on the subject, as follows:

> "A mere entry upon land, with continued occupancy and improvement thereof, gives no vested interest in it. It may, however, give, under our National land system, a privilege of pre-emption. But this is only a privilege conferred on the settler to purchase land in preference to others. * * * His settlement protects him from intrusion or purchase by others, but confers no right against the Government."

10 Opinions of the Attorney General, 57.

The next case following *Frisbie* v. *Whitney* is The Yosemite Valley case, 15 Wall. 77. Mr. Justice Field, speaking of the requirements necessary to the acquirement of title under the pre-emption laws, at page 87, says:

> "When these prerequisites (including the payment of the purchase price) have been complied with, the settler for the first time acquires a vested interest in the premises occupied by him, of which he can not be subsequently deprived. * * * The United States by those acts enter into no contract with the settler, and incur no obligation to any one that the land occupied by him shall ever be put up for sale. They simply declare that in case any of their lands are thrown open for sale the privilege to purchase them in limited quantities, at fixed prices, shall be first given to parties who have settled upon and improved them. The legislation thus adopted for the benefit of settlers was not intended to deprive Congress of the power to make any other disposition of the lands before they are offered for sale, or to appropriate them to any public use."

Without following the line of authorities further, it is sufficient to say that the doctrine has since been several times reaffirmed.

Shepley v. *Cowan,* 91 U. S. 330;
Atherton v. *Fowler,* 96 U. S. 513;
Wirth v. *Branson,* 98 U. S. 118.

This as between the settler and the Government.

As it relates to grants in aid of railroads and for internal improvements, there are numerous decisions determining when a pre-emption or homestead claim attaches, or at what period of time in the acquirement of

such a claim the land has become appropriated, hav
in view the language of each particular Act, denot
the exceptions from the grants. Thus in *Kansas Pac*
Railway Co. v. *Dunmeyer,* 113 U. S. 629, it was h
that the claim of homestead had attached when a ho
stead entry was made upon the land, and, having b
made prior to the filing on the part of the railway co
pany of its map of definite location, the land cove
was excepted from the grant by the words "Not so
reserved, or otherwise disposed of by the United Sta
and to which a pre-emption or homestead claim may
have attached."

A like ruling was had in *Hastings, etc., Railroad*
v. *Whitney,* 132 U. S. 357, where the exception was
lands to which "the right of pre-emption or homest
settlement has attached." What is meant by a ho
stead entry is there explained. It is not a simple en
ing into possession or occupation of the land, but th
things must concur to constitute an entry on pu
lands: First, the applicant must make an affidavit
ting forth the facts which entitle him to make such
entry; second, he must make a formal application; a
third, he must make payment of the money requi
"When," says the Court, "these three requisites are co
plied with, and the certificate of entry is executed
delivered to him, the entry is made—the land is entere
(12 St. 392.)

In *Maddox* v. *Burnham,* 156 U. S. 544, it was h
that the mere occupation of public land, with a purp

at some subsequent time of entering it for a homestead, gave the party so occupying no rights against the railway company.

It is true that a man refused his right of entry by the officers of the local land office will not be deprived thereby of his priority in right. *Ard* v. *Brandon,* 156 U. S. 537. But the principle has no bearing upon the question as to what constitutes a valid homestead entry.

In *Northern Pacific Railroad* v. *Colburn,* 164 U. S. 383, 386, the Court says:

> "But frequent decisions of this Court have been to the effect that no pre-emption or homestead claim attaches to a tract until an entry in the local land office."

And further, quoting from *Lansdale V. Daniels,* 100 U. S. 113, 116:

> "Such a notice of claim or declaratory statement is indispensably necessary to give the claimant any standing as a pre-emptor, the rule being that his settlement alone is not sufficient for that purpose."

In *Tarpey* v. *Madsen,* 178 U. S. 215, 225, it was added:

> "And the acceptance of such declaratory statement, and noting the same on the books of the local land office, is the official recognition of the pre-emption claim."

So that it was finally adjudged that the question whether a homestead or pre-emption had attached as it respects the filing of a map of definite location must depend upon the record in the land office.

In line with the foregoing decisions, this Court has held (*Eastern Oregon Land Co.* v. *Brosnan*, 147 Fed. 807), that a mere settler, who had made no filing on the land under the land laws, was not an appropriator within the exception of the grant, but that where such a settler was in occupancy under a pre-emption or homestead claim duly filed, there was an "appropriation."

These authorities illustrate and determine the point of time when rights are acquired by settlers, that give them superiority over grants made in aid of railroads and internal improvements, under the usual exceptions from the grants. Whenever it occurs that there has been an entry of a homestead, or a proper notation in the land office of a pre-emption application, so that there appears a record of the initiatory steps to obtain such a claim, then it may properly be said that the claimant acquires a vested right as against the person or corporation claiming under such grants, but not until then.

So much for vested rights in this relation.

As between contesting claimants of homestead or pre-emption rights, a still different rule obtains. The first in occupancy of the land, with a bona fide intention or purpose of appropriating the same under the laws and regulations providing therefor, has the better and superior right. As was said in *Atherton* v. *Fowler*, *supra*:

> "During this preliminary period he had no vested right to the land; but, as we have elsewhere decided, he did thus acquire the right of preference in the purchase. That is to say, if he made the necessary settlement and improvement, and the necessary declaration in writing, no other person could buy the land until the period elapsed which the law gave him to pay the purchase-money."

And again in *Tarpey* v. *Madsen, supra*:

> "So that any controversy between two occupants of a tract open to pre-emption and homestead entry is not determined by the mere time of the filing of the respective claims in the land office, but by the fact of prior occupancy."

In a sense the prior occupant has a vested right, but only as against another claiming under the same statutes. And so "vested right" is a relative term, depending for its acquirement upon the particular claim that is put forth.

I have thus developed the subject for present application, but before coming to that, it will be instructive to examine another case confidently relied upon by counsel for interveners. It is *Jumbo Cattle Co.* v. *Bacon,* 17 S. W. 186. A statute of Texas, with its amendment, provided for the sale of State lands at fifty cents per acre to any responsible person who would make application therefor and survey the same. In pursuance thereof, parties made regular application to purchase certain State lands, caused survey to be made, paid the fees therefor, together with the fees for recording, and tendered the purchase price. Under this state of facts, it was determined that the applicants acquired a vested right in the land, and that their interest thus acquired was not affected by a subsequent act repealing the statute under which the applicants proceeded. In the course of the decision the Court said:

> "When there is an offer made by the Act of the Legislature, which is accepted by an individual, there is a contract which it is not within the power of the State to impair. * * * The expenses of the surveys, in connection with the price to be paid to perfect the title, are sufficient consideration to support the contract."

This case is truly illustrative. There must be an offer to sell on some terms, and there must be an acceptance of the offer on the terms proposed, before there can be a meeting of minds, or any contractual relations can arise. The Government has granted certain lands to the railroad company under a provision that the grantee shall sell to "actual settlers." The grant, however, is not accompanied by an offer to sell. Surely the Government makes no such offer. Being a law as well as a grant, the act directs that the grantee shall sell. But suppose the grantee refuses to obey the law, is there, notwithstanding, an offer on its part to sell? Does the law make the offer for it? There might perhaps have been some grounds for so holding if the railroad company had been accorded no discretion in the matter, and was simply required to perform a mere ministerial service in executing deeds to such actual settlers as should come and pay it the maximum price of $2.50 per acre. But it has a discretion. It may sell in less than 160 acre tracts and for less than $2.50 per acre. So who shall say that, by reason of the law alone, it has offered to sell in tracts of 160 acres, and for $2.50 per acre, so that any actual settler may purchase upon those terms. It has the right to sell upon those terms, but the law does not make any such offer for it. While the Act is a law unto the grantee, it binds no one else. It is not an offer to sell to actual settlers. The general Government withdrew these lands from the public domain, and from sale and settlement, under its administration, when it made the grant. Prior thereto the Government's offer of sale was through the pre-emption, homestead, and other acts providing for the disposal of the public domain. No party could acquire any vested right as against the Government, or as against railroad or other grantees, under exceptions favoring the settler, or as against adverse claimants, without a compliance with the acts and under the rules and regulations of the Land Department. The acts for the disposal of the public domain constitute standing offers of sale upon the terms designated, to any who are disposed to accept them and qualify themselves to become purchasers. But the acceptance consists in acceding to the terms of the offer, and no vested right can arise except by a compliance with the terms laid down.

For the due and orderly administration of the disposal of the public lands, through the pre-emption, homestead, and other acts according the privilege and right of purchase, regulations are established by the Land Department, and a code of rules adopted under authority of Congress, until a complete and thorough system of administration and judicatory has been established, by which to serve the demands of purchasers and claimants, and to determine and settle adverse interests as they arise. Experience has demonstrated the necessity for such a system of administration to subserve and preserve the interests and rights of purchasers. By the grant in question Congress has withdrawn a considerable body of the public domain from sale and disposal by the Government, so that those lands are no longer offered under the pre-emption, homestead, or any other law of Congress unless it be under the Act making the grant. But the grant, as we shall presently see, is one conveying title, so that the Government is without further right or power of disposal. Congress has not attempted to regulate the sale of this large body of land in any way, but has simply declared that the grantee shall sell to "actual settlers." Having thus withdrawn these lands from the public domain, and from sale and disposal through the Land Department, and having granted them to the railroad company with a bare declaration that the grantee shall so sell the lands, without attempting in any way to prescribe the manner of sale, or to provide rules or regulations for the administration of the disposition of the grant, seems to me plainly to evidence an intendment that the grantee should itself administer the disposal of the grant, and should proceed about it in its own way and manner. As previously observed, a command to the company that it shall sell, or even an agreement to sell by the company with the Government, cannot be construed in any way as an offer to third parties to sell. A breach of the law or obligation would entail its penalties as per the intendment of the law or contract, but the grantee would incur no liability to a person not a party to the compact.

It has been held that, where one party has paid money to another for the benefit of a third, or has paid a consideration for which a third party was to receive some benefit, the third party has a right of action directly against the party receiving the money or consideration. That rule can have no application here, because, if for no other reason, it is not known who the third party is. The land is to be disposed of to no specific person, but to actual settlers, in quantities not greater than 160 acres to each person—a great class of persons—and it was not intended that the bounty should be distributed among the entire class; no single third party can come forward and demand any specific tract of land from the company. This demonstrates the difficulty of selling to actual settlers without the adoption of some rule or regulation for determining who are actual settlers, and to test their good faith. In fact, in the administration of the sale of this grant, the grantee is given considerable discretion. It may require actual settlement upon the tract selected, it may require reasonable improvements; and it may require residence for a reasonable time to insure good faith. It might regulate the payments, requiring cash in hand, or deferred payments; it might regulate the quantity of land to be sold to each person, not exceeding 160 acres to any one person; and it might regulate the price, not to exceed $2.50 per acre. Indeed, it has a reasonable discretion as to when it shall open up the lands to occupancy and settlement, so that the lands may be disposed of to its advantage, as well as to the advantage of the settlers. How can it be said, then, that Congress has made the offer of sale, to which the grantee has acceded, and therefore that any one, coming forward asserting himself as intending actual settlement, and tendering the price, concludes a bargain with the grantee for the purchase of 160 acres of land? Such was not the intendment or purpose of Congress, and such is not the effect of the grant. Nor is the person claiming to be a settler, who has gone upon the land and is in occupancy of the tract selected, in any better position. There can be no purchase, either by right of settlement or otherwise, until the grantee or its successor has offered the lands for settlement and sale.

It is hardly to be questioned that the Act of 1866 in its original cast contemplated a granting to the railroad company designated by the Legislature of the State of Oregon, of the entire fee to these lands, accompanied with only two conditions, namely, that assent to the act should be filed with the Secretary of the Interior within one year from its passage, and that the road should be completed within the time designated in section six.

There were to be no other limitations of the estate in any way, and if the conditions mentioned were complied with, the railroad company would be vested absolutely with an unconditional title. This it could sell or dispose of as it saw fit, and in any way or manner that might seem best for its individual purposes. As the clause limiting sales to 160 acres to one person, etc., was not then in the minds of Congress, the intendment of the original act, of course, could not have been the same as with the amendment added. Amendments change intendment. That is the very purpose for which they are made—to give new or modified expression to the will and purpose of the Legislature. Amendments are not only effective for adding a new purpose to the old Act, but they may reach back and give new cast and intendment as well. The amendments becoming part of the Act itself, the whole must be construed together, as the original Act would have been construed as one, harmonizing any seeming repugnance or incongruity, if possible, and so expounding as to give effect to every part. Logically, therefore, the intendment of the entire Act as amended would differ from the original just so much as it was the legislative purpose to change it.

It is earnestly and stoutly urged that, as the lands were granted avowedly for the purpose of aiding in the construction of the railroad, and to secure the safe and speedy transportation of the mails, munitions of war, etc., and it being specifically directed that such lands should be applied to the building of the road, the primary and paramount purpose of the grant was the construction of the road and telegraph line, and that the sale of the lands to settlers was meant to be secondary, subordinate and subservient thereto. The lands themselves could not well aid in the construction, or be applied to the building, unless they could be disposed of or mortgaged, and the proceeds arising therefrom put to use in meeting the expense incident to such construction or building. Therefore, it is argued that there was conferred along with the grant the implied authority to sell the granted lands, or any portion thereof, and the right to mortgage the fee thereof for the purpose of obtaining the means with which to carry on the work, and that the provision relating to the sale of the lands to settlers, being subservient to the paramount purpose, was intended as a directive regulation only, and not binding upon the company either as a covenant or a condition. Reliance is placed upon *Platt* v. *Union Pacific R. R. Co.*, 99 U. S. 48, in support of this position. This case was concerning the Union Pacific grant, made by Act of Congress of July 1, 1862, as amended by Act of July 2, 1864. The grant there, as here, was for the purpose of aiding in the construction of a railroad, etc., but it contained a provision that "All such lands so granted * * * which shall not be sold or disposed of by said company within three years after the entire road shall have been completed, shall be subject to settlement and preemption like other lands, at a price not exceeding $1.25 per acre to be paid to said company." The seventh section of the Act required the road to be completed by the first day of July, 1874. The road was so completed, and patents to all the lands granted were directed to be issued to the company in November of that year. Long prior thereto, however, to wit, on April 16, 1867, the company executed a mortgage hypothecating all the lands granted to secure the payment of certain coupon bonds amounting to $10,400,000. The plaintiff in said cause filed his declaratory statement upon a quarter-section of the land as a pre-emptor, September 21, 1878, more than three years after the completion of the entire road, made proper proofs and tendered the purchase money, and the question presented for consideration was, whether he was entitled to such quarter-section as against the railroad company. The question turned upon the single inquiry whether the execution of the mortgage was a disposal of the land, and it was decided that it was, so that the quarter-section in question was not subject to pre-emption at the time of filing plaintiff's declaration thereon. On the argument, it seems to have been urged that the interpretation given by the Court to the words "sold and disposed of" was repugnant to the governmental policy of guarding against monopolies of public lands by single holdings. Answering this, it was conceded by the Court that Congress even then had that policy in view, when it declared that the lands not sold or disposed of within three years after the road was completed should be subject to settlement, but it was said that such policy "was manifestly subordinated to the higher object of having the road constructed, and constructed with the aid of the land grant." All this in support of the Court's position that a mortgaging of the lands was tantamount to a disposal thereof, and that this particular quarter-section had been disposed of within the intendment of the grant at the time it was attempted to pre-empt it. That is to say, the paramount object of Congress being to secure a construction of the road, it was rather to be assumed that it intended to permit the granted lands to be disposed of by mortgage, thereby providing the necessary funds for construction. There was no intimation that the clause providing for settlement and pre-emption was inoperative in any way as to any lands that might remain unsold or undisposed of for three years after the road was completed. Quite contrary was the conviction of the Court, for it declares that:

> "The construction gives full effect alike to the paramount and the subordinate purposes of the Act."

The grant, without words of restriction or limitation of title, would unquestionably authorize the grantee to sell, mortgage, or otherwise dispose of lands comprised thereby, as it might see fit, for a person is entitled to do as he pleases with his own, so that he does no wanton injury to another. But if the grant does carry with it a restriction or limitation, then it must needs be given effect accordingly. Such must have been the view of the Court in the Platt case, for it says, in further argument in support of its position as to the significance of the words "disposed of":

> "No limitation was set to the quantity of land

> which the company might sell to single associations, or single persons. It was left at liberty to sell, if it could, to any land association or private purchaser, the entire body of the lands or any lesser quantity, regardless of the general legislative policy. * * * With that power no pre-emptor was authorized to interfere." That is, if sold at any time within three years after the entire road was completed.

It is quite probable that the paramount purpose of Congress in making the grant in question was to secure the construction of the road, and we might well let it be so conceded. It by no means follows, however, that that purpose has rendered inoperative and nugatory for any effective use any succeeding clause in the Act, or that it renders any the less effective any limitation that may have been reserved as to title, or any restriction that may have been imposed as to sale of the lands. That the grant was in aid of the road, and to be applied to the construction thereof, does not argue that the lands were to pass in absolute fee simple, with no restriction or limitation. If Congress had so desired, it could have granted but half the amount of lands that it did, or could have granted the even sections instead of the odd, or could have withheld any indemnity for lands previously settled upon, or otherwise disposed of. It might have granted an estate for years only in the lands, or the timber thereon, reserving the lands, as it did in fact reserve the mineral lands. And so, without question, it might have made the grant upon any valid condition that it desired to annex, be it precedent or subsequent, and yet the estate, whatsoever it was that was in reality granted, would go in aid of construction, and the grantee would be bound so to apply it. It would simply have to deal with the estate, whatever its quality or quantity, that it had been given for raising funds with which to meet the expenses of building. So the fact that lands were granted in aid of construction, and were required to be applied in building the road, is not antagonistic to the idea of a condition subsequent attending the grant, if such was the purpose of Congress. Manifestly the fee simple absolute would have been a more valuable and available asset, but if Congress did not choose to grant such a bounty, believing that the lesser estate would be adequate for the purpose, that would end the controversy, and it is sufficient to find out the intendment of Congress in that relation.

In this connection, it should be noted that Congress fixed the price of Government lands lying within the limits of the grant, being the even numbered sections, at double the minimum price of public lands outside, and reduced the quantity of land to which the homestead settler was entitled to eighty acres. The Act of thus regulating the price of Government lands within the railroad limits was an incentive and inducement to the company to dispose of its lands to settlers also, and was in harmony with the provision later annexed by amendment requiring it to sell to actual settlers only, at a price not to exceed double the minimum namely, $2.50 per acre, while it was left at liberty to sell for less if at any time it so desired. Without the amendment, however, and whatever may be its effect, the company was not restricted in any way as to the manner of its disposal of the grant. But the intendment of an amended Act may be very different, as I have previously observed, from that which signalized the original.

It is worthy of remark in passing that the Government not only granted the lands, but gave the right of way over such of the public lands as the road might pass through, together with all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, etc., and so much of the timber on mineral lands as should be required to construct the road over said lands—not an inconsiderable bounty—and all in aid as well of the construction of the road and telegraph line.

The Government was to receive a consideration for its grant, namely the transportation of its mails, troops, munitions of war, etc. This in a purely private grant, where technical words appropriate to the creation of a condition subsequent are wanting, would evidence an intendment not to create such a condition. But where technical words are in fact employed, and the grant is by the Government, being public in nature, other considerations apply, and these facts should be taken into account, along with all other matters attending the adoption of the Act, in endeavoring to ascertain the intendment of Congress.

Patents were to be issued as the road was completed, section by section of twenty miles each, for the lands granted to the extent of and coterminous with the completed sections. This was another incident of the grant. The patents became simply evidentiary of title, while they operated as further assurances thereof. The grant, that is, the Act of Congress making it, yet remained the railroad company's primary and essential muniment of title, to which reference should always be had for the quantity and quality of the estate granted and the terms and conditions attending it. The provisions for patenting the grant are usual to most grants in aid of railroad construction, and throw no particular light upon the purpose of Congress in limiting the sale to settlers only.

Congress reserved the right and authority to enter into possession of the road in case the railroad company should fail at any time to keep the same in repair and fit for use, and, after assuming control, to repair it as needed. To meet the expenses thereof, it was empowered to devote the income of the road thereto, or it might fix pecuniary responsibility not to exceed the value of the lands granted. The purpose of this provision is plain. It was to insure the up-keep of the road, so that its use would be at all times available to the United States for the transportation of mails and troops, munitions of war, etc. This enhances the consideration which the Government received, and is continuously to receive for its bounty, and speaks favorably of an intendment to grant an absolute title, for the larger the consideration the greater one would assume would be the value of the thing given for it.

The requirement to operate the road throughout its two divisions without discrimination as to rates and time of service was simply meant to afford compensation, either to the Government or to the public for any damages sustained in this relation, and has no particular bearing upon the question in hand.

It was further required that the company should file its assent within one year, and complete the first section of twenty miles within two years (extended by the amendment of June 25, 1868, to eighteen months after the passage of that Act), completing the entire road on or before July 1, 1875 (extended by the amendment to July 1, 1880). These were conditions subsequent, rendering the Act null and void in case of failure to comply with the requirements, and subjecting the grant to reversion to the Government.

It is argued with much force that, having made such specific provisions for a forfeiture of the lands for nonobservance of these provisions, Congress, if intending to annex a condition subsequent by the provisions of the amendment of April 10, 1869, under consideration, would have been equally specific in language, so that there would be no doubt as to its real purpose. To this argument, there are reasons contra. The amendment was adopted at another and a later session of Congress, when Congress was addressing itself specifically to the one object, while reviving the grant, that of devoting the lands ultimately to use and acquirement by actual settlers.

The provision contained in the amendment of April

10, 1869, that nothing therein should impair any rights previously acquired by any railroad company under the original Act, has been commented upon sufficiently heretofore, and its purpose expounded.

This epitome of the provisions of the Act of 1866, with its amendments, will suffice for inference and deduction as it respects the intendment of Congress in annexing the Actual Settlers' Clause.

At the time of the adoption of the Actual Settlers' Clause as an amendment, it was, as we have seen, the firm policy of Congress to dispose of its public lands to settlers, while as yet it had not entirely abandoned the policy of making donations in the way of grants to railroads. The purpose of Congress in requiring railroad grants as well as the public domain to be disposed of to actual settlers, is aptly and strongly emphasized by the clause under consideration; and can any one doubt that it designed to make its edict in that behalf effective? The debates in Congress while a like proviso was earlier under consideration show unmistakably what the individual members thought of it, and the course the legislation took, to my mind, indicates quite as clearly the intendment of Congress itself. It will be recalled that Mr. Lawrence, in moving an amendment to the Denver-Pacific Railroad bill, which is in effect the same as the one under consideration, in connection therewith proposed further that the Secretary of the Interior be authorized to prescribe rules for carrying the enactment into effect, while Mr. Logan purposed making the lands subject to entry at the Government Land Office, the price thereof at the rate of $2.50 per acre, to be deposited in the Treasury of the United States as a sinking fund for the redemption or purchase of the bonds of the company, so far as it was adequate. Congress, however, declined to incorporate either of these ideas into its legislation, but did adopt the Julian amendment in their stead; and this identical amendment was later incorporated in the Act of July 25, 1866. The result was that the grantee company was liberated of all governmental control over the administration of the grant, and was left free to dispose of the lands in its own way, in pursuance of the terms of the amendment. This fact rather emphasizes than detracts from the obligation of the company to observe the letter of the law, and is in disparagement of the idea that it was to exercise a discretion only in the premises. It may have been, and presumably Congress was influenced by the thought, that the company had the discretion to dispose of these lands in less quantities than 160 acres, and at a price less than $2.50 per acre, if it should so desire. However this may be, the effect was to give such a discretion in that way. This was an advantage to the company, for it operated to enable it to dispose of the grant more expeditiously. Along with this idea was another operating to the benefit of the railroad company. Congress, while pursuing its policy of disposing of the public domain to settlers, increased the price under pre-emption, and decreased the amount by half that the homesteader was entitled to take, thus conceding to the company equal advantage with the Government, and even the privilege of underselling it. The legislation was, however, not without benefit to the Government also, for it was assumed that the construction of the road would open up the lands to settlement and occupation along its course, through the increased facilities for transportation that would thus be afforded. It is quite contrary to the purpose of both Congress and the company itself to say that actual settlement was not in contemplation of the parties. While a considerable portion of the Willamette Valley was then occupied by early settlers under the old Donation Act, yet it was with keenest anticipation of the settlement and upbuilding of the territory along the line that the road was authorized and constructed. Mr. Julian's words were strongly expressive of the purpose of the amendment, as well as of the expectation of those concerned, when he said:

> "This will avoid complete monopoly of the lands, as sanctioned by the old system of land grants, and at the same time devote to settlement and tillage the odd numbered sections granted, while creating in this way established communities and a local business along the line of the road."

The amendment was in its nature a revival of the grant, Congress and the promoters of the company both believing that the grant had lapsed; and as the original grant was of the fee, the revival was effective to restore it in fee, but with the provisions in question subjoined. This argues with conclusive force against the idea of a trust. Congress did not take the lands back and regrant them, but in effect revived the old grant with limitations. So that, taking into consideration the course of the legislation resulting in the adoption of this amendment, and viewing it in the light of contemporaneous conditions, it would seem that it was the firm purpose of Congress to impose upon the grantee a positive and mandatory obligation and duty to observe the behests of the amendment.

The amendment contains apt words of a condition subsequent, namely, "Provided that" and "only." It does not contain a clause of re-entry. It is quite sufficient, as we have seen, if it contains the one without the other, if from the entire Act the intendment to create a condition subsequent nevertheless appears. Indeed, neither words of condition nor a clause of re-entry is indispensable to the creation of a condition subsequent. It is yet sufficient if it otherwise appears that such was the purpose of Congress. In this relation, the Act is to be construed as a law, which is the voice of command, not of privilege or discretion, and the grant itself is to be construed most strongly against the grantee and in favor of the Government. The grant is a private one, and not by nature general and public, and the limitation placed upon the sale of the lands is in no way repugnant to the grant. These matters are to be considered along with all the provisions of the original act, as well as of the amendments, the analysis of which as it relates to the question in hand I have given. And upon the whole, giving efficacy to all the provisions of the grant, I conclude that the amendment in question imposed thereon a condition subsequent, for a breach of which on the part of the grantee company the lands would be subject to forfeiture to the United States. See *Nicholas* v. *Southern Oregon Co., supra,* and *Warrior River Coal & Land Co.* v. *Alabama State Land Co., supra.*

Further than this, either this provision is purely a covenant, or, as is contended by defendants' counsel, a mere directive regulative covenant carrying with it no duty or obligation on the part of the grantee to do what the terms of the grant or the law, or the contract if so termed, plainly declares it shall do, depending entirely upon its own volition, and discretion, or it is something more. As a covenant purely, the Government has no such interest therein as will afford it any relief whatsoever, as it could lose nothing by maladministration of the grant. Was such the intendment of Congress, that the Government should thus be left remediless, no matter how flagrant might be the violation of the terms of the provision? If so, the proviso might just as well have been omitted *in toto,* as it is thus rendered a dead letter, without force or effect, and with scarcely a purpose or design. It means nothing, and requires or compels nothing. In the case of *Mills County* v. *Railroad Companies, supra,* it is true the Supreme Court held, with relation to the swamp-land grant as extended to the State of Iowa, that it imposed an obligation and discretion, resting in the good faith of the State, as respects the application of such lands for the purposes designated in the grant. That, however, was a grant to the State, which had a purely public interest to subserve. I have been referred to no case where a purely private grant has been so construed, although in aid of the construction and maintenance of a public utility.

It is highly reasonable that Congress intended no such idle ceremony. Rather should we suppose that the proviso, annexed by specific amendment as it was, was designated to be a positive, efficient, and living condition, to be faithfully and punctiliously observed, with substantial and remedial consequences to follow a deliberate and wilful infraction thereof. This could only be, as the provision does not create a trust, by entailing forfeiture for the infraction. I am not making this deduction *ab inconvenienti,* but because it is impossible to believe that Congress intended anything else. Leaving itself remediless upon the hypothesis of a covenant, it must have intended that the general Government should have right of enforcement for non-compliance with the law by forfeiture of the grant.

It was the intendment of Congress that the railroad company should administer the grant in its own way, but that it should sell to actual settlers in quantities not greater than 160 acres to any one purchaser, and at a price not exceeding $2.50 per acre. It could sell in less quantities, and for a less price. The mandate of the law is that the "lands granted * * * shall be sold." This imposed upon the grantee the obligation to dispose of the lands, for it was the purpose that all the lands along the line of the road, both the granted lands and the public domain, should be opened to occupancy and settlement. Senator Williams and others were of the view, as it respects the West Side, that "The lands granted are as open under the provisions of this bill to actual settlers as they are under the pre-emption laws of the country." While Senator Vickers maintained that the grant "was expressly upon the condition that the lands are to be sold to actual settlers."

I am of the opinion, however, while it was designed that the lands covered by the grant should be opened to settlement, and this was made incumbent and compulsory upon the railroad company, that until it was done and the company offered the lands for sale, no one could acquire any vested right therein, because, as I believe, the administration of the grant in disposing of it to settlers was reposed wholly in the railroad company. No time is named when the lands shall be sold, but this does not detract from the obligation to sell—to put the land upon the market. The company was required to enter upon its administration of the grant under the Act within a reasonable time, taking into consideration the attending circumstances and conditions, and for a violation of duty in this regard the grant would be subject to forfeiture. Possibly the company could mortgage the grant in its entirety, but it would necessarily be subject to the condition subsequent attending it, and the mortgagee could acquire no greater interest.

These considerations render it unnecessary to consider further the defendants' eighth point of contention.

As it pertains to the West Side grant, or that of

May 4, 1870, while the provision relating to actual settlers does not contain the same words indicative of a condition subsequent as the amendment to the East Side Grant, the provisions of section five show very clearly the purpose of Congress. A sinking fund was there provided for, to consist of the net proceeds of the sales of the granted lands, which were to be set apart and appropriated, through a mortgage or deed of trust to two or more trustees, for the purchase from time to time, and the redemption at maturity, of the first mortgage construction bonds of the company, on the road, depots, stations, side-tracks, and wood-yards, not exceeding $30,000 per mile of road, payable in gold coin not longer than thirty years from date; and it was declared that no part of such fund should be applied to any other use until all of such bonds were purchased or redeemed and canceled. Thus it was contemplated that the lands were not to be hypothecated, with the road and its equipment, for raising funds generally, but were to be disposed of under the provisions of the Settlers' Clause, the proceeds thereof going into the sinking fund, to be disposed of as above indicated. In this way, and in this way only, the lands were to be used in aid of the construction of the railroad and telegraph line. As Senator Williams said in the Senate: "The entire object of this section is to make the grant insure the purpose contemplated by the bill, that is, to aid in the construction of the road, providing that the net proceeds of the land granted shall be invested and set apart to secure the bondholders who may advance money for its construction." This does not comport with the idea that the grant was of the entire fee, without condition, entitling the company to sell at any price, and to receive the proceeds to its own use, whether above or below the price fixed by the Act. It does not, therefore, seem reasonable that Congress designed that these provisions should be merely directive and regulative, to be observed or not within the discretion of the grantee.

Under the theory of counsel for defendants that the Settlers' Clause constitutes "a mere directive covenant," the Government would logically, and quite naturally, possess a nominal interest only in the grant, and hence could not enforce the obligation. The argument, while unsound, in my opinion, affords the most cogent reason for inducing the belief that Congress had no such purpose in view. Upon the other hand, it intended that the legislation should be effective, and in view of the rules of construction, which have been previously discussed, the known policy of Congress relative to the disposition of the public domain, and the attending conditions, I am firmly impressed that it was the intendment of Congress to impose a condition subsequent by the adoption of the Actual Settlers' Clause in this Act, as well as by the April 10, 1869, amendment to the Act of July 25, 1866.

We next come to the question urged that the suit cannot be maintained as one to enforce forfeiture nor to quiet title, because (1) the Government has not declared forfeiture; (2) the fact of forfeiture has not been adjudicated by a court of law; and (3) the defendant railroad company holds the legal title and possession.

It is not, nor can it be, claimed that the Government has not the same rights and remedies accorded to a private person for a forfeiture of a grant for good cause existing. *Atlantic and Pacific Railroad* v. *Mingus,* 165 U. S. 413. The essential and particular contention of counsel for defendants is, that they are entitled to a common law proceeding in the determination as to forfeiture, and that this contemplates a trial by jury and not a proceeding in equity. Further, that equity is without jurisdiction to enforce a forfeiture, nor would it exercise such jurisdiction.

It is wholly unnecessary that I trace the history of office found and determine with nicety its common law purposes, as the decisions of the Supreme Court have dealt with the subject by no uncertain deduction, and but slight reference need be made to authorities beyond these decisions. One thing is certain, that the jury there summoned, and before whom the issues were ascertained and determined, was not the common law jury before whom a citizen has right in law and under Magna Charta, and under the Constitution of this Government, to demand trial where his liberties or his rights, whether of person or property, are drawn in question. It has no relation to the great and long revered right of trial by jury. Blackstone's definition of inquisition or office found proves this. It is "an inquiry made by the king's officer, his sheriff, coroner, or *escheator, virtute officii,* or by writ to them sent for that purpose, or by commissioners specially appointed, concerning any matter that entitles the king to the possession of lands or tenements, goods or chattels. This is done by a jury of no determinate number, being either twelve or less, or more. * * * These inquests of office were devised by law, as an authentic means to give the king his right by solemn matter of record; without which he, in general, can neither take nor part from anything. For," continues the author, "it is a part of the liberties of England, and greatly for the safety of the subject, that the king may not enter upon or seize any man's possessions upon bare surmises without the intervention of a jury."

3 Blackstone, 258, 259.

It was a procedure peculiarly adapted for the king's use, and the important thing about it was that a record might be made and entered whereon the king could base his right to possess himself of the lands, goods, and chattels of his subject; and as it respects lands, the office found put him into immediate possession, without the necessity of a formal re-entry. Although its frequent use was for the determination of attainder, escheats, and breaches of conditions annexed to grants, and the like, the record was not conclusive, and the subject was yet entitled to a trial suitable at common law for the final determination of his rights. A good illustration is found in escheats, and the procedure is thus stated by Mr. Justice Gray, in *Hamilton* v. *Brown,* 161 U. S. 256, 263:

> "The usual form of proceeding for this purpose was by an inquisition or inquest of office before a

> jury, which was had upon a commission out of the Court of Chancery, but was really a proceeding at common law; and, if it resulted in favor of the King, then, by virtue of ancient statutes, any one claiming title in the lands might, by leave of that Court, file a traverse, in the nature of a plea or defense to the King's claim, and not in the nature of an original suit. * * * The inquest of office was a proceeding *in rem;* when there was a proper office found for the King, that was notice to all persons who had claims to come in and assert them; and, until so traversed, it was conclusive in the king's favor."

In this country, however, while the Government may invoke the proceeding by nature of inquisition or office found for declaring forfeiture and establishing re-entry, it is not necessary to do so. The same object may be as adequately accomplished by legislative declaration. In one of the earlier adjudications upon the subject of forfeiture in this country (*United States* v. *Repentigny,* 5 Wall. 211, 267), the Court says:

> "We agree that before a forfeiture or reunion with the public domain could take place, a judicial inquiry should be instituted, or, in the technical language of the common law, office found, or its legal equivalent. A legislative Act, directing the possession and appropriation of the land, is equivalent to office found. The mode of asserting or of assuming the forfeited grant is subject to the legislative authority of the Government. It may be

> after judicial investigation, or by taking possession directly, under the authority of the Government without these preliminary proceedings."

In a subsequent case it was declared that "Actual entry or office found is not necessary to enable the Government to take advantage of a condition broken."

McMicken v. *United States,* 97 U. S. 204, 217.

If a condition subsequent be broken, the circumstance does not, *ipso facto,* produce a reverter. The estate continues, notwithstanding, until proper and adequate steps be taken to consummate the forfeiture. Where, however, the grant is a public one, "the remedy," says Mr. Justice Brown, in *Atlantic and Pacific Railroad* v. *Mingus,* 165 U. S. 413, 431, "is by an inquest of office or office found, a judicial proceeding but little used in this country, or by a legislative act directing the posesssion and appropriation of the land." After a discussion of the authorities in substantiation of the position, he concludes as follows:

> "These cases are not put upon the ground that the United States reserved the right to declare a forfeiture, or even provided expressly for a reversion of title in case of a breach, but upon the general ground that the Government was vested with the same right as a private grantor, upon breach of a condition subsequent, though such right was, from the necessities of the case, to be exercised in a somewhat different manner, viz., by legislative act instead of re-entry."

> "But while we think the practice of forfeiting by legislative act is too well settled to be now disturbed, we do not wish to be understood as saying that this power may be arbitrarily exercised, or that the grantee may not set up in defense any facts which he might lay before a jury in a judicial inquisition. It would comport neither with the dignity of the Government nor with the constitutional rights of the grantee, to hold that the Government by an arbitrary act might divest the latter of his title when there had been no breach of the conditions subsequent, or when the Government itself had been manifestly in default in the performance of its stipulations. The inquiry in each case is a judicial one, whether there has been, upon either side, a failure to perform, and it makes but little practical difference whether such inquiry precedes or follows the re-entry or act of forfeiture."

In a later case—*New York Indians* v. *United States*, 170 U. S. 1, 24, the same eminent jurist says:

> "A distinction is drawn by the authorities between the case of a private grantor, who may reenter in the case of the breach of a condition subsequent, and the Government, which can only repossess itself of lands by legislative or judicial action."

In *Columbia Valley R. Co.* v. *Portland & S. Ry. Co.*, 162 Fed. 603, 606, the Circuit Court of Appeals for the Ninth Circuit, speaking through Gilbert, Circuit Judge, of the purpose of legislative action, says:

> "It is the 'legislative assertion of ownership of the property for breach of condition.' It is itself the entry of the grantor for condition broken."

See further:

> *Schulenberg* v. *Harriman,* 21 Wall. 44, 63;
>
> *Farnsworth et al,* v. *Minn. & Pac. R. R. Co.,* 92 U. S. 49, 66;
>
> *McMicken* v. *United States,* 97 U. S. 204, 217;
>
> *Van Wyck* v. *Knevals,* 106 U. S. 360, 368;
>
> *Bybee* v. *Oregon & California R'd Co.,* 139 U. S. 663, 674;
>
> *United States* v. *Tennessee & Coosa R'd,* 176 U. S. 242, 256;
>
> *United States* v. *Northern Pacific Ry. Co.,* 177 U. S. 435, 441.

Office found for the King put him into immediate possession, without the necessity of a formal entry. So it seems in case of a legislative declaration of forfeiture for breach of condition subsequent, "It is itself the entry of the grantor." But, notwithstanding the entry, whether through office found or by legislative edict, the grantee is by no means precluded. It may be that it has the effect to change the manner of further procedure by putting the grantor into possession, so that it would have to proceed in equity to quiet title, rather than by action in ejectment; but the grantee resisting, it needs yet the adjudication of a Court of competent jurisdiction to terminate the controversy as to the right of forfeiture. The legislative edict determines no fact, except that it is an assertion of an election to re-enter for breach, and adjudicates nothing.

Now, the Government not having re-entered for breach of condition subsequent, it is urged that the defendants are entitled to a jury trial as to the fact of breach and forfeiture, and that equity will not entertain cognizance to enforce a forfeiture. Further than this, that equity is without jurisdiction to determine the cause, because the Government has an adequate remedy at law, by ejectment, for possession.

Answering the first proposition, it is quite true that the right to have controverted questions of fact, in common law causes, decided by a jury remains, but it is none the less true that matters cognizable in equity may be and generally are tried without the interposition of a jury.

> *North Pa. Coal Co.* v. *Snowden,* 42 Pa. St. 488, 492.

And I see no reason why, if equitable jurisdiction is called into requisition upon some well established equitable ground, the Court may not try the fact of breach and forfeiture as well as any other fact in the case. We have seen that the jury trial incident to inquisition or office found is not the common law jury trial preserved by Magna Charta and the Constitution of this Government. If equity has jurisdiction to entertain the suit at bar, it has jurisdiction as well to determine whether breach has been suffered which entails the forfeiture by election of the Government.

There can be no quarrel as to the proposition that the distinction between actions at law and suits in equity is rigidly miantained in the Federal courts. *Anglo-American Land, M. & A. Co.* v. *Lombard,* 132 Fed. 721, 731.

It is quite strongly stated by many of the authorities that equity will not interpose its jurisdiction to enforce either a penalty or a forfeiture, and such may be said to be the general rule. Some of the expressions to be found are as follows:

> "It is a universal rule in equity never to enforce either a penalty or a forfeiture. Therefore Courts of Equity will never aid in the devesting of an estate for a breach of a covenant on a condition subsequent, although they will often interfere to prevent the devesting of an estate for a breach of a covenant or condition."

Story's Eq. Jur. (13 Ed.) Sec. 1319.

> "It is a well-settled and familiar doctrine that a Court of Equity will not interfere on behalf of the party entitled thereto, and enforce a forfeiture, but will leave him to his legal remedies, if any, even though the case might be one in which no equitable relief would be given to the defaulting party against the forfeiture."

Pomeroy's Eq. Jur. (3 Ed.) Sec. 459.

"Equity never, under any circumstances, lends its aid to enforce a forfeiture or penalty, or anything in the nature of either."

> *Marshall* v. *Vicksburg*, 15 Wall. 146, 149.

"Equity abhors forfeitures, and will not lend its aid to enforce them."

> *Jones* v. *Guaranty & Indemnity Co.*, 101 U. S. 622, 628.

See also:

> *Craig v. Hukill*, 37 West Va. 520;
> *M. & C. R. R. Co.* v. *Neighbors*, 51 Miss. 412.

In the last case cited it is further said:

> "Nor will the Court be induced to depart from its uniform course, and take cognizance of that question because the jurisdiction is sought on the ground of removal of clouds from the title for the right of the complainants to a dispersion of the cloud is dependent upon a favorable adjudication of the estate, by reason of a breach of the condition."

Yet, notwithstanding these strong statements, there is in the rule a flexibility which the Supreme Court has recognized, for it says, in *Henderson* v. *Carbondale Coal & Coke Co.*, 140 U. S. 25, 33:

> "Equity always leans against them (forfeitures), and only decrees in their favor when there is full, clear and strict proof of a legal right thereto."

In the case of *Brewster* v. *Lanyon Zinc Co.*, 140

Fed. 801, determined in the Court of Appeals Eighth Circuit, which was a suit in equity to establish as matter of record the forfeiture of an oil and gas lease, and to cancel the same as a cloud upon complainant's title, in an exhaustive and very able opinion rendered by Mr. Justice Van Devanter, it was declared that:

> "The better view is that the rule is not absolute or inflexible, any more than is every forfeiture harsh and oppressive; that its influence and operation do not extend beyond the reasons which underlie it; and that in cases, otherwise properly cognizable in equity, there is no insuperable objection to the enforcement of a forfeiture when that is more consonant with the principles of right, justice, and morality than to withhold equitable relief."

In *Westbrook* v. *Schmaus*, 51 Kan. 558 (33 Pac. 306), the Court entertained a suit to quiet title, where forfeiture was declared proper; and in *Edwards* v. *Iola Gas Co.*, 65 Kan. 362 (69 Pac. 350), the Court recognized the principle. So in *Brown* v. *Vandergrift*, 80 Pa. 142, 148, which was for the forfeiture of an oil lease, the Court said:

> "In a case like this equity follows the law, and will enforce the covenant of forfeiture, as essential to do justice. It is true as a general statement that equity abhors a forfeiture; but this is when it works a loss that is contrary to equity, not when it works equity and protects the landowner against the indifference and laches of the lessee and prevents a

great mischief."

See also

Glocke v. *Glocke,* 113 Wis. 303.

As said by Story, Eq. Jur., Sec. 439:

> "The beautiful character or pervading excellence, if one may so say, of equity jurisprudence is that it varies its adjustments and proportions so as to meet the very form and pressure of each particular case in all its complex habitudes."

The Supreme Court has announced practically the same rule. In *Farnsworth et al.* v. *Minn. & Pac. R. R. Co.,* 92 U. S. 49, 68, that Court says:

> "But it is said that provisions for forfeiture are regarded with disfavor and construed with strictness, and that Courts of Equity will lean against their enforcement. This, as a general rule, is true when applied to cases of contract, and the forfeiture relates to a matter of admitting of compensation or restoration; but there can be no leaning of the Court against a forfeiture which is intended to secure the construction of a work, in which the public is interested, where compensation cannot be made for the default of the party, nor where the forfeiture is imposed by positive law."

A little later the Court quotes from Lord Macclesfield, in *Peachy* v. *The Duke of Somerset,* 1st Strange, as follows:

> "Cases of agreement and conditions of the party

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and of the laws are certainly to be distinguished. You can never say that the law has determined hardly; but you may say that the party has made a hard bargain."

See also:

Chandler v. *Crawford,* 7 Ala. 506;

Lafayette County v. *Hall,* 70 Miss. 678.

Beyond this, the Federal courts have entertained jurisdiction in equity to forfeit land grants.

United States v. *Dalles Military Road Co.,* 140 U. S. 599;

United States v. *California &c. Land Co.,* 148 U. S. 31;

United States v. *Oregon &c. Railroad,* 164 U. S. 526;

United States v. *Tennessee & Coosa R'd.,* 176 U. S. 242.

In the case cited next to the last the statement shows that it was instituted by bill to quiet title to about 90,000 acres of land in Oregon; and in the last cited that the suit was brought "to forfeit a land grant made to the State of Alabama in aid of the construction of the railroad."

If it be said as to these cases that the Government, by legislative declaration through acts of Congress, had forfeited the grant to all lands lying opposite the unconstructed portions of the roads, whether wagon roads or railroads, and therefore had resumed title and with it possession, so that the Government was in a position, by being in possession, to interpose its relief by quieting title or removing a cloud, it may be anwered that the grantee's possession was scarcely more than fiction of law, if indeed the Government was not in possession prior to the declaration of forfeiture.

But without this, and conceding that the Government is not in possession of the lands in controversy here, it is scarcely to be argued that the railroad company has possession other than such as may follow any grant. The company is not in absolute or actual possession. It has not planted its feet upon the soil in what is termed *pedis possessio*. The lands in the main are wild and unoccupied, and are such that with reference to them the Government may maintain a suit to quiet the title thereto, or to remove a cloud affecting them injuriously to the Government. The bill of complaint shows quite sufficient for this.

Section 516 of the statutes of Oregon, B. & C. Comp., provides as follows:

> "Any person claiming an interest or estate in real estate not in the actual possession of another may maintain a suit in equity against another who claims an interest or estate therein adverse to him, for the purpose of determining such conflicting or adverse claims, interests or estates."

Under the construction given to the statute by the State Supreme Court, if the plaintiff be not himself in possession, he must allege and prove that the property is not in the possession of another; otherwise he will be relegated to a court of law, where he has an adequate remedy by action in ejectment. *Moore* v. *Shofner,* 40 Or. 488, 492. And the possession that another holds, to deprive the plaintiff of his suit must be actual as distinguished from constructive possession, the latter being such as follows the delivery of a deed merely. *O'Hara* v. *Parker,* 27 Or. 156, 167.

The equitable relief afforded by State statutes of this nature might be availed of in the Federal courts if they do not go to the extent of depriving the defendant of his right of trial by jury. If, however, plaintiff has an adequate remedy at law, he is compelled to resort to the law forum for his relief. Without a statute, bills *quia timet,* or to remove cloud from a legal title, cannot be brought by one not in possession, because the law provides a remedy by ejectment, which is plain, adequate, and complete. *United States* v. *Wilson,* 118 U. S. 86, 89.

In *Holland* v. *Challen,* 110 U. S. 15, the Supreme Court sustained a suit to quiet title under a statute that permitted the same to be instituted by any person, "whether in actual possession or not," the subject of the suit being "unoccupied, wild and uncultivated land."

In a later case, *Wehrman* v. *Conklin,* 155 U. S. 314, the Court, having under consideration an Iowa statute which purported to enlarge the jurisdiction of equity to quiet title, held that such enlarged jurisdiction, if sought to be availed of in a Federal Court sitting within the State, could only be exercised subject to the constitutional provision entitling parties to trial by jury, and to the provision in R. S. Sec. 723, prohibiting suits in equity when a plain, complete, and adequate remedy at law exists. But the principle announced in the case of *Holland* v. *Challen* was not disturbed, where neither party was in possession, the subject of the suit being wild and uninhabited land. So that the Oregon statute does not go beyond the principle adhered to in the Federal courts, that the suit will not lie if the plaintiff has a complete and adequate remedy at law.

Further discussion of the subject will be found in *Frost* v. *Spitley,* 121 U. S. 552, and *Whitehead* v. *Shattuck,* 138 U. S. 146.

The remedy at law which will suffice to deprive a Court of Equity of jurisdiction must be as "certain, prompt, and efficient to the ends of justice as the remedy in equity."

Kilbourn v. *Sunderland,* 130 U. S. 505, 514;
Gormley v. *Clark,* 134 U. S. 338, 349;
Davis v. *Wakelee* 156 U. S. 680, 688.

The remedy sought here includes the cancellation of a number of patents, as well as the determination of the question of forfeiture by the railroad Company, and it must be conceded that the remedy at law is not as complete and adequate as in equity.

This brings us to the authority given by Congress for the institution of this suit. The Attorney General was "authorized and directed to institute and prosecute any and all suits in equity, actions at law, and other proceedings which he may deem adequate and appropriate to enforce any and all rights and remedies of the United States of America in any manner arising or growing out of or pertaining to" the acts in question granting lands, etc., "and in and by any and all such suits, actions, or proceedings, * * * in such manner as he shall deem appropriate, assert all rights and remedies existing in favor of the United States relating to the subject of such suits, actions, and proceedings, including the claim on behalf of the United States that the lands granted by each of said Acts, respectively, or any part thereof, have been and are forfeited to the United States by reason of any breaches or violations of any of the terms or conditions of either or any of said Acts which may be alleged and established in any such suits, actions, or proceedings; it not being intended hereby to determine the right of the United States to any such forfeiture or forfeitures, but it being intended to fully authorize the Attorney General in and by such suits, actions, or proceedings to assert on behalf of the United States and the Court or Courts before which such suits, actions, or proceedings may be instituted or pending to entertain, consider and adjudicate the claim and right of the United States to such forfeiture or forfeitures, and if found to enforce the same."

It is plain that Congress did not, by the resolution, declare any of the lands in suit forfeited. It disclaimed any intention of so doing. But it is equally plain that it did authorize the Attorney General to institute such suit, action or proceeding, as he might deem appropriate to determine the vital question as to whether a forfeiture had been incurred. That is a question that necessarily would have to be litigated in an appropriate proceeding in any event, whether Congress declared a forfeiture in the first instance or not; the railroad company resisting. The declaration of forfeiture does not make it so in fact; and if made contrary to the fact of forfeiture, it could not stand. Otherwise, it would be the most objectionable kind of taking of property without due process of law. The declaration might be effective as a resumption of the grant, and therefore tantamount to a re-entry, so that a suit must recognize the relative positions of the parties as it respects possession; that is to say, that the Government is in possession and the railroad company out. But this rests upon fiction; no such transportation of possession has taken place in fact. However, an election on the part of the Government to forfeit, and thus to resume its grant, may be signified by the bringing of an action or suit for the purpose. The language of Mr. Justice Harlan, in *Schlesinger* v. *Kansas City &c Railway Co.,* 152 U. S. 444, 452, is pertinent.

> "In the case of a public grant, the right of the Government to repossess itself of the estate granted may be asserted through judicial proceedings, or by some Legislative Act showing an assertion of ownership on account of the breach of the condition upon which the original grant was made."

In *Ruch* v. *Rock Island,* 97 U. S. 693, 697, it is said:

> "Bringing suit for the premises by the proper party is sufficient to authorize a recovery, without actual entry or a previous demand of possession."

See, also, *Colwell* v. *Springs Company,* 100 U. S. 55; *Union Pacific Ry. Co.* v. *Cook,* 98 Fed. 281, 284; *Cornelius* v. *Ivins,* 26 N. J. L. 376.

True, these cases arise in ejectment, and were between private parties. But suppose ejectment had been brought here, the parties being so situated as to possession that it was proper, could there be any question that the institution of the action was sufficient as an election to forfeit the grant and to resume possession on that ground? So it is that, the plaintiff having its remedy in equity, the bringing of the suit is tantamount to an election to forfeit, and to resume possession on account thereof.

The real question, as has been previously indicated, is whether any forfeiture has been incurred for breach of condition subsequent, and that is for judicial cognizance, and for judicial inquiry and determination. As said by Mr. Justice Brown in *Atlantic and Pacific Railroad* v. *Mingus, supra*:

> "The inquiry in each case is a judicial one, whether there has been upon either side, a failure to perform, and it makes but little practical difference whether such inquiry precedes or follows the re-entry or Act of forfeiture."

In the present case, the judicial inquiry simply precedes the act of re-entry or forfeiture, and its cardinal purpose is to determine the fact of forfeiture.

Further disposition of the property will follow the adjudication.

While Congress has not declared a forfeiture leaving the judicial inquiry to follow, it has clothed the Attorney General with ample authority to institute a suit for determining whether forfeiture has been incurred or not, and the facts being such that equity may entertain jurisdiction of the cause, there remains no reason why it should not be maintained.

In view of these considerations, the demurrer to the bill of complaint must be overruled, and the demurrers to the cross-complaint and bills of intervention will be sustained, and it is so ordered.

(Endorsed).

Opinion filed April 24, 1911.

G. H. MARSH,

Clerk.

And afterwards, to wit, on the 22nd day of August, 1911, the same being the..............Judicial day of the regular April, 1911, term of said Court; present: the Honorable Chas. E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[ORDER EXTENDING TIME FOR DEFENDANTS TO ANSWER]

[TITLE]

Now, at this day, upon stipulation filed herein, it is Ordered that the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage be, and they are hereby, allowed fifteen days from August 24, 1911, within which to serve and file their answer herein.

CHAS. E. WOLVERTON,

Judge.

And afterwards, to wit, on the 8th day of December, 1911, there was duly filed in said Court, an Order in words and figures as follows, to-wit:

[ORDER ALLOWING AMENDMENT TO ANSWER OF O. & C. R. R. et al., TO BILL OF COMPLAINT]

[TITLE]

Now, at this day, come the plaintiff by Mr. Burdette D. Townsend, of counsel, and the defendants Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage by Mr. William D. Fenton, of counsel and the defendants Union Trust Company by Mr. John M. Gearin, of counsel; whereupon on motion of said defendants Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, It is Ordered that they be and they are hereby, allowed to file an amendment to their answer filed herein; and thereupon said plaintiff moves the court for an order designating a special examiner to take the testimony to be adduced in this cause, whereupon it is Ordered that Miss M. A. Fleming, of Portland, Oregon, be, and she is hereby, appointed a special examiner of this court to take and report to this court the testimony of all of the parties hereto.

CHAS. E. WOLVERTON,
Judge.

(Endorsed) Order allowing amendment to answer, filed December 8, 1911.

G. H. MARSH,
Clerk.

And afterwards, to wit, on the 28th day of April, 1918, there was duly filed in said Court, an Order in words and figures as follows, to-wit:

[ORDER ALLOWING SECOND AMENDMENT TO ANSWER OF O. & C. R. R. et al., TO BILL OF COMPLAINT]

[TITLE]

This cause came on regularly at this time for final hearing; Mr. B. D. Townsend, special Assistant to the Attorney General appearing as attorney for the United States and Messrs. W. D. Fenton, James E. Fenton and Peter Dunne appearing as attorneys for the defendants Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage as Trustee, Mr. John M. Gearin appearing as attorney for the defendant Union Trust Company; whereupon upon motion of attorneys for respective defendants, attorney for the United States consenting thereto, it is Ordered that leave be and hereby is granted defendants Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as trustee, to file an amendment to their answer herein and it is further ordered that leave be and hereby is granted Union Trust Company to file an amendment to its answer herein and thereupon upon consent of attorneys for respective parties, it is Ordered that this cause be and the same hereby is submitted without argument and it is further ordered that testimony taken and exhibits introduced before the examiner herein be received and filed.

CHAS. E. WOLVERTON,
Judge.

(Endorsed) Order allowing amendment filed April 28, 1913.

A. M. CANNON,
Clerk.

And afterwards, to wit, on the 5th day of September, 1911, there was duly filed in said Court, an Answer in words and figures as follows, to-wit:

[JOINT AND SEVERAL ANSWER OF DEFENDANTS O. & C. R. R., SOUTHERN PACIFIC COMPANY AND STEPHEN T. GAGE]

[TITLE]

JOINT AND SEVERAL ANSWER

Of Defendants Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage, to Bill of Complaint of the United States, in the Above-entitled Case, as Amended, September 8, 1911, and April 28, 1913.

The defendants Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage, respectively, now and at all times saving to themselves all and all manner of benefit and advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in complainant's Bill of Complaint (hereinafter called "the Bill") contained, for answer thereto, or to so much and such parts thereof as they are advised it is material or necessary for them or any of them to make answer to, jointly and severally answering, say:

I.

These defendants say that the following allegations made in subdivision "1" of the Bill are true, and they admit that:

(a). The defendant Oregon & California Railroad Company now is, and at all the times mentioned in the Bill as to it was, a corporation organized under the laws of the State of Oregon, and a resident and citizen of that State.

(b). The defendant Southern Pacific Company now is, and at all the times mentioned in the Bill as to it was, a corporation organized under the laws of the State of Kentucky, and a resident and citizen of that State.

(c). The defendant Stephen T. Gage is a resident and citizen of the City of Oakland (not of the City of San Francisco, as alleged in the Bill), and is sued in his own right, and also as sole surviving Trustee under a certain Deed of Trust described in the Bill.

(d). The defendant Union Trust Company now is, and at all the times mentioned in the Bill as to it was, a corporation organized under the laws of the State of New York, and a resident and citizen of that State, and is sued in its own right, and also as Trustee under a certain Mortgage Deed described in the Bill.

These defendants say that they have no knowledge or information as to the truth of any of the allegations made in the said subdivision "1" of the Bill respecting the following matters and things, and on that ground deny each of the said allegations; that is to say:

(a). They deny that each, or any, of the defendants John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, S. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock is a resident or citizen of the County of Columbia, in the State of Oregon, or a resident or citizen of the State of Oregon.

(b). Deny that each, or any, of the defendants Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, and W. A. Noland is a resident or citizen of the County of Lane, in the State of Oregon, or a resident or citizen of the State of Oregon.

(c). Deny that each, or any, of the defendants John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and James C. O'Neill is a resident or citizen of the County of Multnomah, in the State of Oregon, or is a resident or citizen of the State of Oregon.

(d). Deny that each, or any, of the defendants Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, and Frank Wells is a resident or citizen of the County of Clackamas, in the State of Oregon, or is a resident or citizen of the State of Oregon.

(e). Deny that each, or any, of the defendants C. P. Wells, I. H. Ingram, L. G. Reeves, and W. W. Wells is a resident or citizen of the County of Polk, in the State of Oregon, or is a resident of the State of Oregon.

(f). Deny that the defendant F. M. Rhoades is a resident or citizen of the County of Douglas, in the State of Oregon, or is a resident or citizen of the State of Oregon.

(g). Deny that the defendant Marvin Martin is a resident or citizen of the County of Linn, in the State of Oregon, or is a resident or citizen of the State of Oregon.

(h). Deny that the defendant Roy W. Minkler is a resident or citizen of the County of Clarke, in the State of Washington, or is a resident or citizen of the State of Washington; and

(i). Deny that certain of said defendants are described otherwise than by Christian name for the reason that the Christian name of each or any of said defendants is to complainant unknown.

II.

These defendants admit that Congress passed an Act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland in Oregon," which was approved and became operative on July 25th, 1866; and they admit that the copy of said Act setforth on pages 5 to 10 of the Bill is a correct copy thereof.

They admit that the said Act of July 25th, 1866, was amended by an Act of Congress approved June 25th, 1868, entitled "An Act to amend an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland in Oregon' "; and that the copy of said amendatory Act setforth on page 10 of the Bill, is a correct copy thereof.

III.

These defendants deny that no right, title or interest in or to any of the grants, franchises or other benefits in the State of Oregon, provided for by said Act of Congress approved July 25th, 1866, was ever acquired by any corporation or person or otherwise, except at the time, in the manner, and upon the terms and condtiions setforth in the Bill; and in this behalf they say that, as will be hereinafter shown, certain rights, titles and interests in and to the grants, franchises and other benefits in the State of Oregon, provided for by the said Act, were acquired by these defendants and other persons and corporations, otherwise than at the times, in the manner or upon the terms or conditions setforth in the Bill.

They admit that on or about October 6th, 1866, proceedings were had by which certain persons attempted to organize, under the general incorporation laws of the State of Oregon, a corporation bearing the corporate name "Oregon Central Railroad Company," having its principal office at the City of Portland, in the State of Oregon; (On September 8, 1911, by order of court the following words were added by way of amendment:

But in this behalf they say that the incorporation of said Railroad Company was not nor was its organization perfected until after October 10, 1866.)

They admit that the said Oregon Central Railroad Company projected its said railroad line from the City of Portland in a westerly direction through the village of Forest Grove, and thence southerly to and beyond the village of McMinnville, on the westerly side of the Willamette River; and they admit that thereafter the said Company was known as the "West Side" Company and the said railroad was known as the "West Side" Railroad.

They admit that on October 10th, 1866, the Legislature of the State of Oregon adopted, and the Governor of the State of Oregon approved, a Joint Resolution; and that the copy of said Joint Resolution setforth on pages 11 and 12 of the Bill, is a true copy thereof.

They admit that the said West Side Company, assuming itself to have been lawfully designated therefor, on or about May 25th, 1867, through its Board of Directors, adopted a resolution in terms assenting to the provisions of the said Act of Congress of July 25th, 1866, and on or about July 6th, 1867, filed an authenticated copy thereof, together with a certified copy of its Articles of Incorporation, and a certified copy of the said Joint Resolution of October 10th, 1866, in the office of the Secretary of Interior; and they admit and say that on or about August 20th, 1868, said West Side Company filed in the office of the Secretary of Interior a map of survey of its projected line of railroad under the said Act of July 25th, 1866, from Portland by way of Forest Grove and McMinnville, thence southerly through the Willamette, Umpqua and Rogue River Valleys for connection with the California & Oregon railroad on the southern boundary line of Oregon.

These defendants admit and say that on or about April 22nd, 1867, certain persons, residents of the State of Oregon, then and thereafter contending that the said West Side Company was never lawfully incorporated or organized, and designing to secure the several grants, franchises and other benefits of the said Act of Congress approved July 25th, 1866, caused certain proceedings to be had and taken which were intended to incorporate and organize, under the general incorporation laws of Oregon, a corporation bearing the corporate name "Oregon Central Railroad Company," having its principal place of business at the City of Salem, in Oregon; which last-named Company projected its railroad from Portland southerly, along the easterly side of the Willamette River, and was thereafter known as the "East Side Company" and its said railroad was thereafter known as the "East Side" railroad.

They admit that the East Side Company, in furtherance of its said design, on October 20th, 1868, procured to be adopted by the Legislature, and approved by the Governor, of Oregon, the Joint Resolution a correct copy of which is setforth on pages 13 and 14 of the Bill.

They admit that a controversy arose between the West Side Company and the East Side Company as to which Company was entitled to the grants, franchises and privileges made and provided by the said Act of July 25th, 1866, which controversy continued until about January, 1870; but these defendants say that said controversy arose at or about the time of the incorporation (on April 22nd, 1867) of the East Side Company, and did not first arise out of, nor at the time of the adoption of, the said Joint Resolution of October 20th, 1868.

These defendants deny that the said Act of July

25th, 1866, prescribed as a condition precedent to the vesting of any of the grants contained therein, that the Company designated by the Legislature of Oregon should file in the Interior Department, within one year thereafter, or at all, its assent to said Act or any terms or conditions thereof.

They deny that the time within which to file an assent as aforesaid, had expired prior to the designation of the East Side Company by the Legislature of Oregon on October 20th, 1868, or otherwise than as provided by the said Act of July 25th, 1866, to which reference is hereby made; and they deny that because of any premises setforth in the Bill, otherwise or at all, the East Side Company did apply to Congress during the session thereof commencing in December, 1868, or at any time, for an extension of the time within which to file its assent, as setforth in the Bill; they deny that in that behalf, or at all, the East Side Company did lay before Congress the said Joint Resolution of the Legislature of Oregon, or in that behalf, or at all, did represent that all or any of the recitals thereof were true; and they deny that because of any premises setforth in the Bill, otherwise or at all, the several or any of the grants, franchises or privileges of the said Act of July 25th, 1866, had lapsed, or the or any benefits thereof would be wholly, or at all, lost to the State of Oregon unless revived by Congress in the, or any manner, setforth in the Bill, otherwise or at all.

In this behalf they say, that the said Act of July

25th, 1866, authorized and empowered the California & Oregon Railroad Company and such Company (if any) organized under the laws of Oregon as the Legislature of that State should designate, or either of said Companies, to construct a continuous railroad from Portland in Oregon to connection, on the same track gauge, with the Ceneral Pacific railroad in California; that under and pursuant to the provisions of the said Act the said California & Oregon Railroad Company duly filed its assent to the said Act on or about October 8th, 1866, and duly completed the first 20-mile section of the said railroad from its connection with the Central Pacific railroad northerly through the Sacramento Valley to the town of Wheatland on or about October 28th, 1867; and thereafter, prior to December, 1887, the said California & Oregon Railroad Company and the Central Pacific Railroad Company, its successor by amalgamation and consolidation, completed construction of the railroad in California provided for by the said Act of Congress, and aided the defendant Oregon & California Railroad Company to complete its railroad from Ashland in Oregon to connection with the said California & Oregon railroad, at or near the Southern boundary line of Oregon. And these defendants say they are advised by counsel and believe, that the said filing of assent and construction, and subsequent acceptance by the United States of the said railroad as constructed, constituted such full and specific performance of the requirements of the said Act of 1866 as that none of the provisions of section 8 thereof were at any time operative, wholly or in part.

They deny that during consideration by Congress of any application of the East Side Company for further time, the West Side Company appeared before Congress or opposed said alleged or any application of said East Side Company, or in that behalf contended before Congress that the several or any grants, franchises or privileges of said Act of July 25th 1866 had theretofore become or then were vested in said West Side Company.

They admit that Congress had under consideration the Act of Congress approved April 10th 1869 entitled as in the Bill setforth, and did approve said Act on April 10th 1869; but deny that Congress by such Act or otherwise granted any application in respect thereto of said East Side Company, or granted any such application upon the express or any condition that the lands granted as alleged should be sold to actual settlers only in quantities not greater than one quarter-section to one purchaser and at a price not exceeding $2.50 per acre, or granted any application in that behalf of the said East Side Company upon any condition or at all. They admit that the said last-mentioned Act of Congress is correctly setforth in the Bill at pages 15 and 16 thereof.

They admit that on or about June 8th 1869 the Board of Directors of the East Side Company adopted the resolution copied on pages 16 and 17 of the Bill; and that on or about June 24th 1869 a certified copy of the said Resolution was filed in the office of the Secretary of Interior.

They admit that on or about October 29th 1869 the East Side Company filed in the Secretary of Interior's office a map of survey and location of the first sixty miles of its projected railroad; that on December 24th 1869 the said Company completed construction of the first twenty miles of the said railroad commencing at Portland; and that on December 31st 1869 the said twenty miles of constructed railroad was examined and approved by Commissioners appointed by the President of the United States pursuant to the provisions of section 4 of the said Act of July 25th 1866.

These defendants deny that the West Side Company did not complete the construction of any part of its line of railroad pursuant to the terms and conditions of said Acts of Congress, or that at any time said West Side Company acquiesced in the substitution of said East Side Company as alleged in the Bill, or that there was any substitution as alleged of said East Side Company. And they say that the West Side Company applied for, obtained and accepted a grant of lands, franchises and benefits pertaining to so much of its aforesaid projected railroad as extended from Portland by way of Forest Grove to McMinnville, and pertaining to a contemplated railroad from Forest Grove northerly to Astoria, conferred by the Act of Congress approved May 4th 1870, copied on pages 22 to 25 of the Bill. But they deny that said West Side Company ever abandoned or waived all or any claim to the said grants, privileges or franchises of which the said East Side Company became and was the recipient, or that the grant of lands or franchises or any other benefits conferred on said West Side Company by the said Act of May 4th 1870 was applied for, obtained, accepted or made in lieu of any grant of lands or franchises or benefits provided by the Act of July 25th 1866.

They deny that no right, title or interest in or to any grants, franchises or other benefits provided by the said Act of July 25th 1866 was ever acquired by, through or under the West Side Company; and they deny that no right, title or interest in or to any grants, franchises or other benefits provided by the said Act of July 25th 1866, were ever acquired by, through or under the East Side Company except by virtue of or expressly subject to terms or conditions imposed by the said Act of April 10th 1869. In this behalf they say, that no condition or conditions was or were, expressly or otherwise, imposed by the said Act of April 10th 1869; and they say, further, that all the grants, franchises and other benefits in Oregon provided by the said Act of July 25th 1866 were acquired by the East Side Company and these defendants, and that they were so acquired otherwise than by virtue of or subject to any provisions of the said Act of April 10th 1869.

They admit that the East Side Company became involved in litigation questioning its right to use its corporate name, but deny that the said Company became involved in any litigation questioning the validity of its incorporation or organization; they admit that on or about March 17th 1870 the defendant Oregon & California Railroad Company was organized under the general incorporation laws of Oregon, and that on the same day its Articles of Incorporation were executed in triplicate and filed, one in the office of the Secretary of State of the State of Oregon, one in the office of the Clerk of Multnomah County, Oregon (being the County in which the principal office of said Company was located), and one in the office of the Secretary of the said Company, at Portland, Oregon; but these defendants deny that the Oregon & California Railroad Company was organized by the promoters, officers, or stockholders of the East Side Company.

They deny that the principal object of the defendant Oregon & California Railroad Company in fact or as stated in its aforesaid Articles of Incorporation, was to become the successor of the East Side Company, or as such to receive or exercise the grants, franchises or privileges of the said Act of July 25th 1866 or Acts amendatory thereof; and they say that the principal object of the Oregon & California Railroad, in fact and as stated in its said Articles of Incorporation, was to construct, operate and maintain a railroad and telegraph line from Portland, in Oregon, southerly through the Willamette, Umpqua and Rogue River Valleys to connect on the southern boundary of Oregon with the railroad and telegraph line then being constructed northerly through California by the California & Oregon Railroad Company.

They admit that on or about March 29th 1870 the East Side Company executed and delivered to the defendant Oregon & California Railroad Company a certain instrument in writing, copied as "Exhibit B" to the Bill on pages 74 to 97 thereof, purporting to and which did sell and convey unto the said defendant all property of the East Side Company, including the last-named Company's right, title and interest in and to the grants, franchises and other benefits provided by the said Act of July 25th 1866 and the Acts amendatory thereof; and that thereafter, during March and April 1870, the said instrument was recorded in the office of the County Recorder of the several Counties in which was situated any of the lands granted by the said Act of July 25th 1866.

These defendants say that the purpose, intent and effect of the said instrument was, as appears on the face thereof, to operate as a sale and conveyance of all property therein described; they admit and say that the said instrument did constitute the defendant Oregon and California Railroad Company the grantee, by purchase and deed of conveyance, of the East Side Company, of all property and rights of the East Side Company, including the right to construct, complete, equip and maintain the railroad provided for by the said Act of July 25th 1866, and in aid thereof to receive and exercise the grants, franchises and other benefits in that behalf offered and extended as aforesaid, upon all the terms and conditions provided in the said Act of July 25th 1866. These defendants deny that the purpose, intent or effect of the said instrument was not to operate as a sale or conveyance of any of the lands granted by the aforesaid Acts of Congress; and deny that the purpose, intent, or effect thereof was to constitute the Oregon & California Railroad Company the successor of the East Side Company to construct, complete or equip the said line of railroad, otherwise than as grantee by purchase and under the said deed of conveyance; and they deny that by reason of the said instrument, or otherwise, the Oregon & California Railroad Company became or was in anywise obligated by the terms and provisions of the said Act of April 10th 1869.

They deny that the East Side Company became or was dissolved on or about March 29th 1870, or that said Company has not exercised any corporate powers or franchises since that date.

They admit that on or about April 4th 1870, the Board of Directors of the Oregon and California Railroad Company passed the resolution copied on pages 20 and 21 of the Bill; and they admit that on or about April 28th 1870, the Oregon and California Railroad Company filed an authenticated copy of the said resolution, together with a certified copy of the said deed of conveyance of March 29th 1870 ("Exhibit B" to the Bill) in the office of the Secretary of the Interior; and they admit and say that continuously since April 28th 1870, the Oregon and California Railroad Company has assumed to be, and the United States has recognized and treated it as, the successor in interest by purchase and deed of conveyance of the East Side Company, of and to all the rights and property described in the said deed of March 29th 1870.

IV.

These defendants deny that the West Side Company at any time abandoned or waived all or any claim to any of the grants, franchises or other benefits of the said Act of July 25th 1866, or importuned Congress to extend to it in lieu thereof or otherwise or at all any grant of lands, or franchises, or other benefits pertaining to its said projected line of railroad known as the West Side Line or otherwise or at all, or that in such behalf Congress passed the Act approved May 4th 1870, copied on pages 22 to 25 of said Bill; but they admit that Congress did pass said Act.

They admit that by the words "Oregon Central Railroad Company," in the said Act of May 4th 1870, Congress intended to and did refer to and mean the West Side Company. They admit and say that the line of railroad specified in the Act of May 4th 1870, in so far as it extends from Portland to McMinnville by way of Forest Grove, is substantially the same as but deny that it is identical with the line of railroad theretofore projected by the West Side Company, between the said points; and they say that the line of railroad from Forest Grove to Astoria, described in and contemplated by the said Act of May 4th 1870, is not identical with nor along the course of any line of railroad theretofore projected by the West Side Company.

They admit that on or about July 2nd 1870, the Board of Directors of the West Side Company adopted a resolution assenting to the said Act of May 4th 1870;

and they admit that on or about July 20th 1870, the West Side Company filed an authenticated copy of that resolution in the office of the Secretary of Interior.

These defendants deny that on or about August 15th 1870, or at any time or at all, all or any of the capital stock of the West Side Company was acquired by the then or any owners of the capital stock of the defendant Oregon & California Railroad Company, or that thereafter or at any time or at all, all or any of the capital stock of both of said Companies was held by a single interest, or that the affairs of the two Companies were conducted virtually or at all as a single enterprise, until the dissolution of said West Side Company, otherwise or at all.

V.

These defendants deny that all of the original capital stock of the defendant Oregon & California Railroad Company, or that substantially all of the capital stock of the West Side Company, was issued without consideration, or that by reason of the premises or otherwise neither of said Companies had any original capital or other funds for construction or other purposes, except such as was borrowed therefor.

They admit and say that by the issuance or negotiation or pledge of mortgage bonds, but not otherwise, approximately $8,000,000 was, during the year 1870, procured by the Oregon and California Railroad Company, and approximately $1,000,000 was during the year 1871 procured by the West Side Company; and that with the funds thus procured the work of further constructing the East Side railroad and West Side railroad was prosecuted continuously until about January 1873. They admit and say that prior to January 1873 (but not wholly "during said period of construction" as alleged on page 26 of the Bill), the East Side railroad was constructed and extended from Portland to a point near Roseburg distant approximately 197 miles from Portland and that prior to January 1873, and during said period of construction, the West Side railroad was completed from Portland to McMinnville, by way of Forest Grove, a distance of approximately 47 miles. In this behalf these defendants say, that construction of the East Side railroad was commenced during the month of April 1868, and the construction of the part thereof which begins at Portland and ends at a point distant 20 miles southerly therefrom, was completed in December 1869; that prior to the year 1870 a portion of the next 20-mile section of the East Side railroad, extending southerly from the last-mentioned point, was constructed; and that the remainder of said 197 miles of railroad was constructed during the years 1870, 1871 and 1872.

They admit that about January 1873, the funds of each of the said Companies became exhausted, and that because thereof further construction of both railroads was temporarily suspended; that the East Side Company did not resume construction of its railroad until about June 1881; and that the West Side Company never did resume construction of its railroad. But these defendants deny that further construction of either railroad was abandoned at any time.

They admit that on or about July 24th 1874, direction and control of the financial affairs of each of said Companies were assumed and thereafter exercised by the creditors thereof, organized under the name "Bondholders' Committee"; and that on or about February 29th 1876, all of the capital stock of both Companies was acquired by said Bondholders' Committee and thereafter, for several years, the affairs of said two Companies were conducted by and under direction and control of the said Bondholders' Committee. But these defendants deny that all of the capital stock of both of said Companies was acquired by the Bondholders' Committee for virtually a nominal consideration.

They admit and say that on or about October 6th, 1880, the West Side Company executed and delivered unto the Oregon and California Railroad Company, an instrument in writing purporting to and which did grant, bargain, sell, assign, transfer and convey (not to merely "assign, transfer and convey," as stated on page 27 of the Bill) unto the Oregon and California Railroad Company, all franchises, rights, privileges and property then owned or possessed by the West Side Company, including the right, title and interest of the West Side Company in and to the grants, franchises and other benefits of the said Act of Congress approved May 4th 1870—as more fully appears by reference to the said instrument, a copy of which is attached to the Bill as "Exhibit C"—a duly authenticated copy of which ed of conveyance was filed in the Department of terior on or about October 20th 1880. But these fendants deny that the said instrument was executed delivered for the purpose of merging the West Side mpany into the Oregon and California Railroad mpany, or for any purpose other than that therein ted and apparent on the face thereof.

These defendants say that the said instrument was l is a sincere and bona fide deed of sale and convey- e, the true meaning, purpose and intent of which is forth and stated therein. They deny that the pur- e, intent or effect thereof was or is not to operate a sale or conveyance of any of the lands granted by said Act of Congress approved May 4th 1870, but constitute the Oregon and California Railroad Com- ny the successor of the West Side Company to con- uct, complete and equip the line of railroad afore- d, and particularly that part thereof extending from rest Grove to Astoria, or in aid thereof to receive exercise the grants, franchises or other benefits in t behalf extended by Congress as aforesaid, or upon of the terms aforesaid, and not otherwise; but in this alf they say that the said instrument did constitute Oregon and California Railroad Company the ntee of the West Side Company by sale and deed conveyance as aforesaid, of all the rights and prop- therein described.

They deny that on or about October 6th 1880, the st Side Company became and was dissolved; but they admit and say that at all times since the execution and delivery of the said deed of conveyance, the Oregon and California Railroad Company has assumed to be, and the United States has recognized and treated it as, the successor in interest by purchase and deed of conveyance of the West Side Company, of, in and to all franchises, rights and property described in the said deed.

They admit that some, but deny that all, transactions set forth in the Bill as of date subsequent to October 6th 1880, relate to or affect both of said grants of land.

VI.

These defendants admit and say that on or about May 7th 1881, the financial affairs of the Oregon and California Railroad Company were adjusted, substantially but not wholly, as follows: All of the capital stock was by action of its Board of Directors and its Stockholders canceled; but they deny that said stock was so canceled for reasons set forth in the Bill. They admit that the amount of capital stock of the Oregon and California Railroad Company was then established at, has ever since remained and still is of, the total par value of $19,000,000, consisting of $12,000,000 preferred stock and $7,000,000 common stock; and that in payment of its then existing indebtedness, with accrued interest thereon, all of the said new capital stock was then issued, and ever since has been and still is outstanding. They admit and say that by the issuance of the new capital stock, and use of a part of the proceeds of the new bond issue referred to on page 80 of the Bill all of the then existing indebtedness of the Oregon and California Railroad Company was fully paid and discharged, and the several mortgages and instruments purporting to secure the same were canceled and satisfied.

They admit that on June 2nd 1881, the defendant Oregon and California Railroad Company executed and delivered to Henry Villard, Robert Peebles and Charles Edward Bretherton, as Trustees for the owners and holders of the said preferred stock, an instrument in writing which purported to and did convey to said Trustees all of the lands of both of the said land grants, in trust to secure to the owners of the said preferred stock a right and interest (not merely "some pretended right or interest," as is alleged on page 29 of this Bill) in and to the lands of the said land-grants, as more particularly appears in the said instrument, a copy of which is attached to the Bill (pages 104 to 129) as "Exhibit D" and made part thereof. In this behalf these defendants say, that the said "Exhibit D" was made, executed and delivered subject to the prior Trust Mortgage of June 1st, 1881, referred to and described in the first paragraph on page 110 of the Bill, as is expressly stated by the said Trust Mortgage ("Exhibit D" to the Bill) in the second paragraph on page 114 of the Bill.

They admit and say, that "Exhibit D" purports to convey by way of mortgage, and purports to authorize said Trustees and their successors, in case of grantor's failure to make the payments therein provided for, to sell and convey the mortgaged lands to persons other than actual settlers, and in quantities greater than one quarter-section to one purchaser, and for a price exceeding $2.50 per acre. But these defendants deny that the said instrument purports to convey or that it purports to authorize the Trustees to convey, the said lands for purposes other than those prescribed in or by the said land-grants, respectively; and they deny that the said instrument was or is in violation or breach of any terms or conditions of each or either of the said land-grants.

They admit that on or about June 28th 1881, said trust mortgage was recorded in the office of the County Recorder of Multnomah County, Oregon, in Book 27 of Mortgages at page 179; and that thereafter, and about the same time, was recorded in the office of the County Recorder of the several Counties in which was situated any part of the lands granted by either of said land-grants.

They admit that thereafter such proceedings were had and taken under the provisions of the said instrument "Exhibit D" to the Bill, by and with the consent and co-operation of the Oregon and California Railroad Company, that the defendant Stephen T. Gage became the sole surviving Trustee thereunder; and they admit and say that the said Stephen T. Gage as such Trustee (but not individually), and that the defendant Southern Pacific Company as present owner of the said preferred stock, claim and assert a lien upon the said lands, under and by virtue of the said Trust Mortgage, in accordance with the terms and provisions thereof; and deny that neither of said defendants have any right, title, interest or lien in, to or upon all or any part of the said lands.

They admit that by the issuance and negotiations of its corporate bonds, bearing date June 1st 1881, and May 26th, 1883, respectively, known and designated as "First Mortgage Bonds" and "Second Mortgage Bonds," respectively, the defendant Oregon and California Railroad Company provided approximately $5,000,000 further construction funds; and admit that on or about June 1st 1881, the work of constructing the East Side railroad was resumed and thereafter continued until about January 1884; and they admit that between June 1st 1881, and January 1884, the East Side railroad was constructed and extended from Roseburg to a point about 1½ miles southerly from Ashland, in the State of Oregon, a distance of approximately 145 miles.

These defendants admit that about January 1884, the last-mentioned construction funds became exhausted, and the work of construction was discontinued until about April 1887, when it was resumed; but they deny that the work of construction was at any time abandoned.

They admit and say that on or about January 19th

1885, default having been made in the payment of interest on the said First Mortgage Bonds and Second Mortgage Bonds, a suit was brought in the United States Circuit Court for the District of Oregon, by holders of said Bonds, against the Oregon & California Railroad Company and others as defendants; in which suit, and on or about January 19th 1885, the railroads and other property of the Oregon and California Railroad Company were, by order of the said Court, placed in the hands of a Receiver appointed for that purpose.

They deny that on or about May 12th 1887, or during the pendency of said receivership, the defendant Southern Pacific Company acquired, or thereafter exercised, ownership or control of the defendant Oregon & California Railroad Company, except that about the year 1901 the defendant Southern Pacific Company acquired certain capital stock of the Oregon & California Railroad Company and thereafter exercised the ordinary rights and privileges as such stockholder; and they deny that during the pendency of said receivership, or at any time, any breach or violation of any condition or conditions of the said land-grants or either of them was or were committeed under the direction or influence of the said Southern Pacific Company, or at all.

These defendants admit and say, that on May 12th 1887, the general status of the said land-grants was as follows:

Under the East Side grant, during the years 1871 to 1877, inclusive, patents for 323,078.68 acres of land (being land contiguous to the first 125 miles of the East Side railroad) were applied for by and issued to the defendant Oregon and California Railroad Company as owner of the East Side grant under and by virtue of the said Deed of March 29th 1870 ("Exhibit B" to Bill); and admit that no patents were issued for lands of the East Side grant prior to the year 1893, except the said patents issued during the years 1871 to 1877, inclusive; but they deny that the said patents were applied for by or issued to the Oregon & California Railroad Company as the successor of the East Side Company (as alleged in the Bill), except as owner of the East Side grant by and under the said deed from the East Side Company.

No patents under the West Side grant were issued prior to the year 1895.

The total length of the East Side railroad is, approximately, 367 miles; with the exception of the northerly 197 miles thereof no part of the East Side railroad was constructed within the times prescribed by the terms of the said East Side grant; and on May 12th 1887, the portion thereof extending from Ashland to the southern boundary line of the State of Oregon, remained unconstructed. That part of the West Side railroad extending from Forest Grove to Astoria was never constructed, and because thereof the granted lands contiguous to said unconstructed railroad were, by Act of Congress approved January 31st 1885 and entitled "An Act to declare forfeiture of certain lands granted to aid in the construction of a railroad in Oregon.", forfeited to and the ownership thereof resumed by the United States.

Of the aforesaid granted lands, 164,992.48 acres (not "approximately 250,000 acres" as stated in the Bill) were sold by the Oregon and California Railroad Company prior to May 12th 1887. Nearly all of said lands were sold to actual settlers, and in small quantities, although in a few instances in quantities exceeding 160 acres to a single person and for prices slightly in excess of $2.50 per acre; but such sales were so made for the reasons hereinafter setforth, and not because of any provisions in the said Joint Resolution of April 10th 1869, or section 4 of the said Act of May 4th 1870.

VII.

These defendants deny that about the month of January 1885, or at any time, a certain railroad syndicate known as the "Southern Pacific System," controlling substantially all railroad lines in the southwestern part of the United States and particularly on the Pacific Coast south of the State of Oregon, including the Central Pacific Railroad Company, organized under the general incorporation laws of the State of Kentucky, or otherwise, the defendant Southern Pacific Company, as a general holding Company for the said or any syndicate; and they deny that about the month of March, 1885, or at any time, the defendant Southern Pacific Company acquired or ever since has exercised a controlling or any interest in each of the corporations constituting said "Southern Pacific System"; and deny that at about the same, or at any, time the Southern Pacific Company became or ever since has been the lessee of each of said corporations, whereby it came into possession of, or at all or any times has operated all of said railroad lines.

They deny that several of the constituent Companies of the said "Southern Pacific System" held lands granted by the United States in aid of the construction of their respective lines of railroad, aggregating many millions of acres of land, or that there is or ever was such organization or syndicate as "Southern Pacific System"; and they deny that shortly after its organization, or at any time, the defendant Southern Pacific Company, established a general, or any, Land Department, with offices at the City of San Francisco, in the State of California, or elsewhere, under the charge of a person known as its Land Agent, or otherwise, or that thereupon or thereafter the Southern Pacific Company assumed or exercised through such Land Agent, control over the handling or disposing of all or any lands of its constituent Companies.

They deny that shortly after the affairs of the defendant Oregon & California Railroad Company were placed in the hands of a Receiver as aforesaid, the defendant Southern Pacific Company, designing to extend its aforesaid or any railroad system or its aforesaid or any land holdings by acquiring ownership or control of the defendant Oregon & California Railroad Company, in that behalf, or otherwise entered into negotiations with the Oregon & California Railroad Company or the Bondholders or Stockholders thereof or other parties named in the Bill; but admit and say that the Stockholders of the Oregon and California Railroad Company became and were organized under the name "Stockholders' Committee," and that certain of the owners of the aforesaid Morgtage Bonds became and were organized under the name "Frankfort Bondholders' Committee," and that certain other of the owners of said bonds became and were organized under the name "London Bondholders' Committee"—said Bondholders' Committees representing the owners of substantially all of the aforesaid First Mortgage Bonds and Second Mortgage Bonds; but they deny that any of the said Committees was or were organized for any of the purposes setforth in the Bill.

These defendants admit that on or about March 28th 1887, a certain contract in writing was made and entered into by and between the parties therein named, a copy of which contract, marked "Exhibit E," is attached to the Bill.

They deny that by virtue of the said contract or otherwise, all or any corporate securities of the defendant Oregon and California Railroad Company was or were acquired by the defendant Southern Pacific Company; and deny that the general or any purpose or effect of the said contract was such that the defendant Oregon & California Railroad Company or its said lines of railroad, were absorbed by, or merged into, said Southern Pacific System, or that the independent corporate existence of the Oregon & California Railroad Company ceased, virtually or at all. They deny that it appears from the subsequent conduct of the Southern Pacific Company, or otherwise, or that it is in anywise true, that at the time of the negotiation and execution of the said contract, or at any time, it was the purpose or design of the defendant Southern Pacific Company to secure control of the aforesaid land grants, or either of them, or to divert the same from the aforesaid or any lawful uses or purposes thereof, to the exclusive or any use, benefit or enrichment of the Southern Pacific Company, or at all; and they deny that the said contract was by the parties thereto so conditioned, or the conditions, options or provisions thereof were so exercised or performed, that the Southern Pacific Company did thereafter, or at any time, maintain the Oregon and California Railroad Company, a corporation in name or form only, as a mere instrumentality or device, to accomplish or at the same time to conceal its aforesaid, or any, purpose or design, or in that behalf, or otherwise, to obtain or dispose of said lands in the name of or under the guise or pretense of administration or exercise of the aforesaid land-grants, or either of them, by the defendant Oregon & California Railroad Company; and they deny that to that end certain or any proceedings were had or transactions entered into, including that certain contract or lease, or that certain mortgage deed, hereinafter setforth.

These defendants admit that on or about May 12th 1887, all of the capital stock and all of the Second

Mortgage Bonds of the defendant Oregon & California Railroad Company, were transferred, assigned and delivered unto the said Pacific Improvement Company; and all of the said First Mortgage Bonds were transferred, assigned and delivered unto the defendant Southern Pacific Company; but deny that such or any of such transfers, assignments or delivery were made wholly pursuant to the said contract. In this behalf they say that the said contract of March 28th 1887, was made and entered into pursuant to the provisions of, and for the reasons set forth in, the Agreement dated October 11th 1886, between the Central Pacific Railroad Company, Pacific Improvement Company, and Southern Pacific Company, a copy of which is attached to this Answer, marked "Exhibit No. 1," and made part hereof.

They admit that during all times mentioned in the Bill as to it, the Pacific Improvement Company was a corporation organized and existing under the laws of the State of California; but they deny that the said Company was wholly owned, controlled or directed by the owners of a majority of the capital stock of the defendant Southern Pacific Company. They deny that the defendant Southern Pacific Company was the actual purchaser of the said capital stock or Second Mortgage Bonds or any thereof, or paid the purchase price therefor, or any thereof; and deny that the Pacific Improvement Company never had any beneficial interest therein. They deny that under the direction or influence of the defendant Southern Pacific Company, the Pacific Improvement Company was made a nominal party to

he said contract of March 28th 1887, for the purpose
of concealing the true facts in the premises; and say
hat the Pacific Improvement Company was a real,
nd not in anywise a nominal, party to the said contract.

These defendants deny that the Pacific Improve-
nent Company held the said capital stock of the Oregon
& California Railroad Company, or any thereof, for the
se or benefit of the Southern Pacific Company until
n or about April 9th 1901, or at any time; but admit
hat on or about April 9th 1901, all of the said capital
tock then held by the Pacific Improvement Company
vas sold and transferred to the Southern Pacific Com-
pany, which last-named Company has ever since re-
nained the owner and holder thereof. They deny that
t all, or any, times since May 12th 1887, the de-
endant Southern Pacific Company has controlled or
irected the election of directors or officers of the de-
endant Oregon & California Railroad Company, or
as directed or controlled the management or conduct
r corporate acts of the defendant Oregon & California
Railroad Company, including all or any of the transac-
ions or proceedings setforth in the Bill.

They admit and say that on or about January 3rd
888, the defendants Oregon & California Railroad
Company and Southern Pacific Company made and en-
ered into the Lease a copy of which is attached to the
Bill as "Exhibit F," whereby all of the railroads and
ther property of the Oregon and California Railroad
Company used in connection with and for the operating
purposes of said railroads (but not including any lands

of either of said land-grants) were leased to the Southern Pacific Company for the term of forty years; and they admit that the said lease remained in full force and effect until on or about August 1st 1893, when the same defendants entered into a similar Lease of the same property for the term of thirty-four years, a copy of which last-mentioned lease is attached to the Bill as "Exhibit G"; and they admit that the Southern Pacific Company entered into possession of the leased property on or about June 6th 1888, under the first-mentioned lease, and at all times since has been, and still is, in possession thereof, operating the said railroads and enjoying all benefits and profits to which it is entitled, as such lessee.

These defendants say, that on or about February 17th 1885, the Central Pacific Railroad Company duly leased unto the defendant Southern Pacific Company, its railroad from Ogden to San Francisco and from Roseville Junction to Delta, for the consideration and according to the provisions of said Lease, a copy of which, marked "Exhibit No. 2," is hereto attached, and made part of this Answer; and on or about January 1st 1888, the said Central Pacific Railroad Company duly leased unto the said Southern Pacific Company, its railroad from Delta to connection with the Oregon & California Railroad Company at the southern boundary line of Oregon, a copy of which, marked "Exhibit No. 3," is hereto attached, and made part of this Answer; and under and in virtue of which Leases, "Exhibit F" and "Exhibit G" to the Bill, "Exhibit No. 2" and "Exhibit No.

3" to this Answer, the defendant Southern Pacific Company has continuously since on or about January 3rd 1888, maintained and operated the said railroad from Portland to Roseville Junction as one continuous connected railroad, in conjunction with the said railroad from Ogden to San Francisco.

They admit and say that on or about January 3rd 1888, the defendant Oregon & California Railroad Company executed and delivered unto the defendant Union Trust Company, that certain instrument in writing dated July 1st 1887, a copy of which is attached to the Bill as "Exhibit H," purporting to and which did mortgage and convey in trust unto the Union Trust Company, lands and property of the Oregon & California Railroad Company therein described, for the uses and purposes therein setforth, and among other things to secure the payment of certain bonds to be issued and sold by and in the name of the defendant Oregon & California Railroad Company; but they deny that the said instrument was executed under the direction or influence of the defendant Southern Pacific Company.

These defendants admit that by the provision in the last-mentioned instrument "And all the property, real, personal or mixed, which on the 12th day of May, 1887, was covered by the mortgage securing the then existing First Mortgage Bonds of the Oregon & California Railroad Company", reference was had and intended to be had to a certain deed of trust executed by the defendant Oregon & California Railroad Company to Henry Villard, Horace White and Charles Edward Bretherton, as Trustees, dated June 1st 1881, a copy of which is attached to the Bill as "Exhibit I"; and they admit that on January 18th 1888, the said Mortgage Deed of July 1st 1887, was recorded in the office of the County Recorder of Multnomah County, in Book 63 of Mortgages, at page 287 (not page 437, as stated in the Bill), and about the same time was recorded in the office of the County Recorder of each of the several Counties in which was situated any of the lands granted by either of said land-grants.

They admit and say that the defendant Oregon & California Railroad Company executed and delivered, and that the said defendant (but not the Southern Pacific Company, or Union Trust Company, as stated in the Bill) sold and delivered certain of the bonds provided for by the said Mortgage Deed of July 1st 1887, of which approximately $17,500,000 in amount are still outstanding; and they admit that the proceeds of said bonds were used to pay the cost of constructing, completing and improving the said Oregon and California Railroad Company's railroads; and they admit that payment of the said bonds, both as to principal and interest, was and is guaranteed by the defendant Southern Pacific Company's endorsement. But they deny that any proceeds from the sale of the said bonds were used by the defendant Southern Pacific Company to purchase securities of the Oregon & California Railroad Company; or that the said bonds inured to the exclusive or any benefit of the defendant Southern Pacific Company; or that the outstanding bonds in fact, or at all, represent or constitute the or any indebtedness of defendant Southern Pacific Company. They admit that the said Mortgage Deed of July 1st 1887, purports to convey by way of mortgage to secure payment of the said bonds, and in case of default in payment thereof authorizes the defendant Union Trust Company to convey at public auction to satisfy the amount due by reason of such default, the said lands, without express limitations or restriction on such sales as to persons, quantity of land or price; but they deny that the said Mortgage Deed purports to convey or authorize the defendant Union Trust Company to convey the said land, or any thereof, for any purpose or purposes other than those prescribed in and intended by the said land-grants, respectively; and they also deny that the said Mortgage Deed was or is in violation or breach of any terms or conditions of each or either of the said land-grants.

They admit and say that the defendant Union Trust Company, as Trustee for the owners and holders of the said bonds, claims and has a lien in, to and upon said granted lands, under and by virtue of said Mortgage Deed of July 1st 1887, according to the terms thereof; and deny that the defendant Union Trust Company has no right, title, interest or lien in, to or upon any of said lands either in its own behalf or as such Trustee.

They admit and say, that during the year 1887 the last section of the East Side railroad, extending from a point near Ashland to the southern boundary line of

Oregon, was constructed by the said Pacific Improvement Company, under a contract with the Oregon & California Railroad Company, executed on or about June 6th 1887, by the terms of which the last-named Company agreed to pay for the said work of construction in its bonds thereafter to be issued and guaranteed by the defendant Southern Pacific Company; and they admit and say that a small part, but deny that a large part of the said section of railroad was constructed prior to execution of the said contract. And they deny that the said construction or any part thereof was under some or any form of contract with the defendant Southern Pacific Company, other than the said Agreement of October 11th 1886, a copy of which is hereto attached as "Exhibit No. 1"; or that in furtherance of any purpose or design setforth in the Bill, otherwise or at all, the Southern Pacific Company, on or about June 6th 1887 or at any time, instigated or caused the defendant Oregon & California Railroad Company or the Pacific Improvement Company to enter into the said contract, except as setforth in said Exhibit No. 1."

They admit that on or about June 6th 1888, the aforesaid receivership proceedings were dismissed and the Receiver was discharged, and all of the said First Mortgage Bonds and Second Mortgage Bonds (not including the bonds issued under the Mortgage Deed of July 1st 1887), together with all Mortgages and Trust Deeds securing payment thereof, were canceled and discharged; and they admit and say that thereupon and ever since the defendant Southern Pacific Company has continued in possession, pursuant to the hereinbefore mentioned Lease ("Exhibit F" to the Bill), of all property of the Oregon & California Railroad Company described in the said Lease.

VIII.

These defendants deny that immediately after June 6th 1888, or at any time, the defendant Southern Pacific Company, through its aforesaid Land Department, or otherwise, assumed or at all or any times thereafter exercised, absolute or any control over the disposition or sale of the aforesaid granted lands of the defendant Oregon & California Railroad Company, or any thereof, conducting all or any business, however, in the name of the latter Company, or otherwise; and in this behalf they say that the Southern Pacific Company has not now nor did it at any time have, a Land Department.

They admit that until the year 1893, and say that continuously thereafter, there was no marked change in the manner of the disposition of said lands; and deny that in the meantime, or at any time, under the direction or influence of the defendant Southern Pacific Company, or at all, preparations were made for future exploitation of the said land-grants or for any examination or administration thereof otherwise than by the Oregon & California Railroad Company in the same but not in any different manner or way than the said lands had been theretofore exploited, examined and administered by the said Company.

They admit and say that long prior to but not about the month of June 1888, a sufficient but not a large force of land examiners and timber cruisers were employed by the defendant Oregon & California Railroad Company, and that such force was kept employed for many years before and after June 1888, and until considerable but not all of the said lands had been examined and prices fixed thereon; but they deny that as to at least eighty per cent of all of said granted lands the first or any sale price as fixed thereon, or that the lowest price for which the same were ever offered for sale, was greatly or at all, in excess of the sum of $2.50 per acre.

They deny that during the years 1891 and 1892, or at any time, anticipating or seeking to evade responsibility for contemplated violations of any terms or conditions of said grants, or under the direction or influence of the Southern Pacific Company, the defendants Oregon & California Railroad Company or Union Trust Company adopted quit-claim form of contracts or conveyances for use in making sales of said lands, or thereafter refused to contract for or give any other form of conveyance, except in execution of former contracts providing for a different conveyance.

In this behalf these defendants say, that during the years 1891 and 1892 the Land Department of the Central Pacific Railroad Company (owner of the land-grant in California made by the Act of July 25th 1866), and Oregon & California Railroad Company standardized their forms of contracts and deeds for the sale and conveyance of their land-grant lands, so as to establish a uniform system, and in that way the Oregon & California Railroad Company adopted certain forms of contracts and deeds then and for a long time theretofore in use by the Central Pacific Railroad Company, including a quit-claim form of contract and deed for use only in the sale of such right, title or interest as the Railroad Company had in such unpatented lands as were unsurveyed, interdicted mineral, or covered by pretended adverse claims; and that on or about the same time, and for the same reason, the defendant Oregon & California Railroad Company adopted and thereafter used the other forms of contracts and deeds in use by the Central Pacific Railroad Company, including the form generally known as "grant, bargain and sale" form, of contracts and deeds for the sale of patented lands.

These defendants admit and say, that lands of the East Side grant to the amount of 2,442,708.42 acres were patented to the defendant Oregon & California Railroad Company between the years 1893 and 1906, both years inclusive; and that lands of the West Side grant to the amount of 128,618.13 acres were patented to the said Company between the years 1895 and 1903, both years inclusive. But they say that the said patents were issued from time to time between said dates pursuant to applications therefor made from time to time, as the lands were surveyed and became susceptible of such applications, between the years 1876 and 1906; but they deny that no patent has been issued under either of said land-grants since the year 1906.

They deny that, in the meantime the defendant

Southern Pacific Company was engaged in developing a market or demand for said lands among wealthy land speculators or timber men, or at all, aided by the said Company's well-equipped organization therefor, or otherwise, or by an extensive or other acquaintance previously established by its, or any, Land Department, in the sale or disposition of other holdings in the Bill mentioned, or otherwise; but they admit and say that an increasing, but not a sudden, demand for the lands of the defendant Oregon & California Railroad Company, arising out of and caused by the completion of its East Side road and connection thereof with the Central Pacific railroad, commenced about 1889 or 1890, and has continued ever since.

These defendants deny that, taking advantage of the opportunity to violate the terms or conditions of said land-grants, or either thereof, promoted or developed as alleged in the Bill, the defendant Oregon & California Railroad Company, under the direction or influence of the defendant Southern Pacific Company, or otherwise, from about the year 1894 until about January 1st 1903, or at any time, sold or disposed of said granted lands, or any thereof, in manner or upon terms in violation or breach of the aforesaid terms or conditions of the said land-grants, or either thereof, or with the sole object of securing the greatest possible financial benefit therefrom, otherwise, or at all; and they deny in that behalf a large quantity of said land was sold to speculators or others for speculation. They admit that some of said land was sold to persons who were not actual settlers thereon and did not purchase the same for purposes of actual settlement, in quantities exceeding one quarter-section to one purchaser, and at prices exceeding $2.50 per acre. They say it is not true, as alleged in the Bill, that the said lands were sold generally in quantities of 1,000 to 45,000 acres to single purchasers at prices from $5.00 to $40.00 per acre; but they admit that in several instances lands in quantities of from 1,000 to 20,000 acres were sold to one purchaser at prices ranging from $5.00 to $20.00 per acre, in one instance at $35.00 per acre, and in one instance at $40.00 per acre, and in one instance a sale in excess of 20,000 acres and of 45,000 acres at $7.00 per acre, was made to a single purchaser; but in this behalf they say, as will be hereinafter more fully shown, that the average quantity sold to one purchaser of said lands is (approximately) 150 acres, the average gross price received therefor is (approximately) $5.00 per acre, and the average net price (after deducting taxes, costs of survey, patenting and administration)is (approximately) $1.50 per acre.

They admit that the defendant Oregon & California Railroad Company has heretofore made approximately 5,306 sales, aggregating approximately 820,000 acres (being approximately 150 acres to each purchaser); and they admit that approximately 4,930 of said sales were for quantities not exceeding one quarter-section to one purchaser, aggregating 296,000 acres; and that approximately 376 of said sales were for quantities exceeding one quarter-section to one purchaser, aggregating approximately 524,000 acres.

They admit and say that, substantially, all of the said 524,000 acres (but deny that a considerable portion of the said 296,000 acres) were sold to persons other than actual settlers, who purchased the land for timber growing and not for settlement thereon, and at gross (but not at net) prices in excess of $2.50 per acre; and they admit that approximately, 478,000 acres of the said 524,000 acres were sold since the year 1897; and they also admit that approximately 370,000 acres thereof were sold to 38 purchasers in quantities exceeding 2,000 acres to each purchaser.

They admit that many, but deny that "nearly all," of the said sales were made by contracts providing for payment of purchase price in from five to ten equal annual installments, and execution of conveyance upon final payment; and they admit that in some instances, but deny that in many instances, conveyances under said contracts were executed after January 1st, 1903; and they admit that a few, but deny that many, of said contracts were still pending at the time this suit was brought.

They admit and say, that of the total sales made as aforesaid, 4,508 have been fully executed and conveyances given, aggregating 740,002.45 acres; and that 571 executory contracts are still pending, aggregating 81,684.31 acres.

These defendants say, that the true facts and particulars respecting the matters and things setforth in the first three paragraphs on page 44 of the Bill, are as follows: Many of the said sales by executed conveyances, were made in pursuance of two or more executory contracts issued to one or several persons and assigned by such person or persons to the person to whom the executed conveyances were given; hence, while as setforth in the next preceding paragraph of this Answer, 4,508 executory sales aggregating 740,002.45 acres of land, have been made, the records and files of the defendant Oregon & California Railroad Company do not show, nor can it now be ascertained, how many executed conveyances were issued in pursuance of such executory contracts, or to how many individuals such conveyances were made. In this behalf they say, for the reasons given, "Exhibit J" attached to the Bill is erroneous and misleading; and that "Exhibit No. 4" attached to and made part of this Answer as a substitute for and in correction of the said "Exhibit J," is true and correct according to the information and belief of these defendants.

They admit and say that as betwen the parties thereto, and in fact and law, the said Mortgage Deed bearing date July 1st 1887, to the defendant Union Trust Company, has been treated as and is a lien upon all of said granted lands which remained unsold on May 12th 1887. They admit and say that all proceeds from the sale of the lands of the last described class which have been sold since May 12th 1887, have been paid over to and received by the Union Trust Company, and that the Union Trust Company, has joined in the execution of all of such executed conveyances; and they deny that the proceeds of all or any sales made since May 12th 1887, or at any time, inured to the exclusive or any benefit of the defendant Southern Pacific Company, by application in payment of the aforesaid bonds or otherwise, except in so far as that by the payment of said bonds the Southern Pacific Company was to that extent released of liability as a guarantor.

IX.

These defendants deny that in the month of October 1901, or at any time, the defendant Southern Pacific Company, with all or any of its constituent lines, became merged into that certain railroad system known as the "Harriman Lines"; and they deny that a railroad system known as the "Harriman Lines," at all times thereafter or at any time held a monopoly of railroad transportation affecting a large or any part of the United States, or particularly or otherwise in the State of Oregon south of Portland.

They deny that thereupon or at any time, a Land Department was organized or established at the City of San Francisco, or elsewhere, to handle, exploit or manipulate all or any lands of the constituent or any Companies of said "Harriman Lines," including the aforesaid, or either, land-grants of the defendant Oregon & California Railroad Company; but they admit and say that all transactions concerning the last-named grants were conducted as before in the name of the defendant Oregon & California Railroad Company; and they admit that sales were continued as before until on or about January 1st 1903.

These defendants say that on April 30th 1911, there remained unsold of said granted lands 2,361,152.41 acres, of which 2,076,326.05 acres were theretofore patented, and 284,826.36 acres thereof at that time remained unpatented; all of which lands are now claimed by the defendant Oregon & California Railroad Company under and by virtue of the said land-grants. But they say that owing to the loss of certain original records by the April 1906, fire in San Francisco, withdrawn during the years 1904 or 1905 from the Land Department of the Oregon & California Railroad Company in Portland for the purpose of investigations then pending, these defendants are unable to say what quantity of said unsold lands, patented or unpatented, remained unsold on January 1st 1903; and, having no knowledge or information on the subject except as above stated, they deny that on January 1st 1903, there remained unsold of said granted lands aproximately 2,373,000 acres, consisting of approximately 2,080,000 acres which had been theretofore patented under said land-grants, and approximately 293,000 acres of unpatented lands which are now claimed by the defendant Oregon & California Railroad Company under and by virtue of the said land-grants.

They admit and say that approximately 1,800,000 acres of said unsold lands are situated southerly from Eugene, and constitute approximately one-third (but not "nearly one-half," as stated in the Bill) of the lands lying within twenty miles on each side of said line of railroad from Eugene to the southern boundary line of

Oregon; and admit that only a small portion of the granted lands in that portion of the East Side grant have ever been sold; but deny that the territory in which said unsold lands are situated was or is wholly dependent on the railroad lines of the defendant Oregon & California Railroad Company now operated by the defendant Southern Pacific Company. They admit and say, that since January 1st 1903, and principally since the passage, on or about February 14th 1907, by the Legislature of the State of Oregon, of the Memorial a copy of which is attached as "Exhibit L" to the Bill, communications have been received by the defendant Oregon & California Railroad Company, purporting to be the several applications of persons exceeding 1,000 in number, to purchase certain of said unsold lands, generally designated and described in such communications as a single 160-acre tract or quarter-section subdivision to each person named; but they deny that said applicants intended or desired to purchase the lands so applied for by them or in their names, respectively, for the purpose of actually settling thereupon or making a permanent or any home thereon; and they deny that several of said applicants had actually settled or established a permanent or any home upon the land so applied for by them or in their names, respectively; and they deny that at the time of said applications to purchase each of said applicants did actually tender to the defendant Oregon & California Railroad Company the sum of $2.50 for each acre so applied for, as the purchase price thereof.

They deny that in addition to the said applicants to purchase, a large or any number of persons are ready or willing to settle upon said lands or to purchase the same for the purpose of actually settling thereupon or of making a permanent or any home thereon, in quantities not exceeding 160 acres to each person, or for the price of $2.50 per acre, or upon any terms prescribed by the said land-grants, or are deterred therefrom by the defendant Oregon & California Railroad Company, as stated in the Bill, or at all; and in this behalf they say that the said lands, generally, are essentially timber-lands, not susceptible of actual settlement, or the establishment of permanent or any homes upon; and they say, further, that all lands of the said land-grants now or at any time susceptible or capable of actual settlement or the establishment of homes upon at no time exceeded (approxmately) 300,000 acres, consisting of small and widely separated tracts, all or nearly all of which were sold to actual settlers or persons claiming to be such during construction and prior to completion, respectively, of said railroads, in quantities of 160 acres or less to a single purchaser, at prices not exceeding $2.50 per acre.

These defendants further say that the said applications to purchase said lands, referred to in the two next preceding paragraphs hereof, were made by persons desiring to obtain title to said respective quarter-sections on account of the timber thereon and not otherwise, and for the purpose of speculation only and not in good faith as actual or any settlers; and that the said lands were chiefly, and in most instances solely, of value because of the timber thereon and were not arable, fit for, susceptible or capable of, actual settlement.

They admit and say, that on or about January 1st 1903, pending examination into the records and affairs of its Land Department, the defendant Oregon & California Railroad Company withdrew from sale all of the said unsold lands; but deny that in violation or breach of any terms or conditions of said land-grants, or either of them, respectively, the Oregon & California Railroad Company, under the direction or influence of the defendant Southern Pacific Company as one of the constituent Companies of said "Harriman Lines," or otherwise, on or about January 1st 1903, or at any time, withdrew from sale all or any of said unsold lands; and they deny that at all the times thereafter the defendant Oregon & California Railroad Company has refused or still refuses to sell any part of said unsold lands to actual settlers, or for purposes of actual settlement, or in quantities or for prices as prescribed by any terms of the said land-grants, or either of them, or at all. They admit that the defendant Oregon & California Railroad Company has at all times refused, and still refuses to entertain any of the aforesaid pretended applications to purchase, or to sell any of the timber-lands applied for as aforesaid, to the persons who made or in whose names were made the said pretended applications, upon any terms offered or made under or pursuant to the said pretended applications; but they deny that ever since January 1st 1903, or at any time, the defendant

Oregon & California Railroad Company has failed or neglected to encourage or promote the settlement of any of the said lands which are susceptible to settlement for the establishment of homes upon, or the purchase thereof by actual settlers for the purpose of actual settlement; and they deny that by divers, or any, means or methods the Oregon & California Railroad Company has at all or any times discouraged, obstructed, forbidden or prevented the settlement of any of said lands which are susceptible of settlement, or the purchase thereof, or any part thereof, upon terms prescribed by the said land-grants, or either thereof, by actual settlers, or for the purpose of actual settlement.

They admit and say that since January 1st 1903, and at all times theretofore, the defendant Oregon & California Railroad Company assumed and asserted and has assumed and asserted an absolute and unconditional estate in and to all of said unsold lands; but deny that it at any time attempted, or is attempting, to convert any conditional estate into an unconditional estate, in violation or breach of any terms or conditions of the said land-grants, or at all. And they deny that by reason of any nominal character of the defendant Oregon & California Railroad Company, or of any other premises setforth in the Bill, or at all, the unconditional estate in the said lands so asserted and claimed by and in the name of the defendant Oregon & California Railroad Company, has inured to the benefit of or has been exercised by the defendant Southern Pacific Company as one of the constituent Companies of the said "Harriman Lines," or otherwise; and they deny that the practical, or any, effect of the premises is the same as if all or any part of said unsold lands had been conveyed to the defendant Southern Pacific Company for the use or benefit of said (so-called) "Railroad Syndicate," or otherwise.

These defendants deny that by virtue of the premises or in violation of the express terms or conditions as well as the plain or any intendment of the said land-grants, respectively, or otherwise, all or any of the said unsold lands or the full or any value thereof has or have been converted to the use or benefit of the defendant Southern Pacific Company, as one of the constituent Companies of the (so-called) "Harriman Lines," or otherwise; and deny that a virtual, or any, land monopoly has been created, or ever since January 1st 1903, or at any time, has been maintained, or hereafter will be maintained, for the selfish or any uses or purposes of the defendant Southern Pacific Company or said (so-called) "Railroad Syndicate," or otherwise, enabling said (so-called) "Railroad Syndicate," among other things, or at all, to control or restrict commercial or industrial development of the territory tributary to said line of railroad, or otherwise, or thereby prevent the construction or establishment of competing railroad lines which would naturally or otherwise, be attracted by the increase in production that would attend a normal or unrestricted development of industrial or commercial resources, if said granted land should be sold to actual settlers or for the purpose of actual settlement, pursuant to any terms or conditions of said land-grants, or otherwise.

They deny that because of the premises, or otherwise, the industrial or commercial or any development of those portions of the State of Oregon wherein are situated the said unsold lands, or any part thereof, has been or will continue to be seriously, or at all, retarded or completely, or otherwise, checked.

They admit that except as otherwise specifically stated, all statements contained in the Bill concerning the withdrawal of said lands from sale, the circumstances, purposes and effects thereof, together with the subsequent opportunities to sell said lands to actual settlers and for the purposes of actual settlement, and the conduct of the defendant Oregon & California Railroad Company in relation thereto, are by the Bill said to, but these defendants deny that they do, apply to each or either of said land-grants.

These defendants have no knowledge or information as to how, or from what sources, "Exhibit K" to the Bill was made or prepared, but to speed the cause admit that it was prepared and made from the returns and in the manner alleged in the third paragraph on page 49 of the Bill; and they admit that the said "Exhibit K" to the Bill contains a full and correct description of all unsold patented lands of the said grant, excepting as to the errors thereof and omissions therefrom particularly setforth in "Exhibit No. 5" attached to and made part of this Answer. For answer to the discovery asked by the last sentence of the said paragraph on page 49 of the Bill, a full and correct statement is hereto attached, marked "Exhibit No. 6," of all unsold, unpatented primary lands, and of all unsold selected but unpatented indemnity lands, claimed by the defendant Oregon & California Railroad Company under said land-grants.

They deny that none of said unsold lands have ever been reduced to possession, or in any way improved, unless it be by persons claiming to have settled thereupon, or seeking to purchase the same, as in the Bill stated; and deny that the reasonable present value of said unsold lands exceeds the sum of $40,000,000.

These defendants say, that the defendant Oregon & California Railroad Company has at all times since the year 1870, been and still is in open and notorious possession of and dominion over the said lands, as follows: The said Company has at all said times openly and notoriously claimed, and prior to about the time of the commencement of this suit was recognized as and admitted by all to be such owner thereof; has, at all times, openly and publicly mortgaged, leased and offered for sale, the said lands; has at all times, caused the said lands to be protected by field-agents who traveled over and protected the same against depredation and waste; has, at all times paid the taxes levied and assessed upon and against the said lands—which payments amount, in all, to $1,827,234.10; and in divers other ways has openly and notoriously proclaimed and asserted, and been in, possession of, the said lands. Besides, large and different portions of said lands have been reduced to possession and improved, from year to year, by persons holding leases thereof for grazing and other purposes, from the defendant Oregon & California Railroad Company; and other large portions of the said lands have been reduced to possession as right of way, station-grounds, depot-grounds, and the like for the railroad purposes of the defendant Oregon & California Railroad Company, as is hereinafter more particularly shown.

These defendants deny that none of said unsold lands now are, or ever were, necessary to reserve for depots, stations, side-tracks, wood-sheds, standing-ground, or any other needful uses in operating any of said railroad lines or any part thereof; and deny that no part of said lands ever was reserved or used, or now is reserved or used, or is intended to be reserved or used, for any of said purposes. And in this behalf these defendants say that all the lands described in "Exhibit No. 7," hereto attached and made part of this Answer, are and at the time this suit was brought were necessary to reserve and were reserved for depots, stations, side-tracks, wood-sheds, standing-ground, and other needful uses in operating the said railroads; and they say that all the lands described in "Exhibit No. 8," attached to and made part of this Answer, now are and at the time this suit was brought were necesary to reserve and were reserved for the other needful uses in operating the said railroads particularly setforth in the said "Exhibit No. 8."

X.

Answering the allegations made, and giving the discovery sought, by subdivision "X" on pages 50 and 51 of the Bill, these defendants say: That the following is a full and correct statement of the total amounts received by the defendant Oregon & California Railroad Company, and disbursed by the said Company, from and in the sale and disposition of the lands of the East Side and West Side grants, from April 1st 1870, to April 30th 1911:

Received, from the sale of lands, ...		$4,338,822.53
Received, from the sale of timber on lands, ...		18,850.25
Received, from timber depredation settlements, ..		10,687.92
Disbursed, for advertising,	$34,784.85	
Disbursed, for Law expenses, ...	218,415.25	
Disbursed, for Grading lands, ...	142,651.40	
Disbursed by U. S., surveying, &c.	145,977.26	
Disbursed, salaries and office expenses, ...	624,344.19	
Disbursed, stationery and printing, ...	18,369.89	
Disbursed, taxes on lands,	1,827,234.10	
Bal. net amount received.	1,356,583.76	
Totals, ...	$4,368,360.70	$4,368,360.70

In addition to the said amounts, the defendant Oregon & California Railroad Company received the following amounts between April 1st 1870, and April 30th 1911, for which no land nor interest in land was disposed of or parted with; and in most instances such receipts were related to and arose out of the same lands accounted for above as disposed of:

Received, from forfeitures under contracts,	$ 88,205.06
Received, for interest on contracts, ...	1,025,922.89
Received, for land leases, ...	5,532.07
Total, ...	$1,119,660.02

They deny that in divers, or in any other ways, the defendant Oregon & California Railroad Company has received or enjoyed financial benefits on account of said granted lands, the particulars concerning which are known or unknown to the complainant.

These defendants deny that any allegation or statement made in the said subdivision "X" of the Bill, contrary to or contradictory of the foregoing statement, is true wholly or in part; and in this behalf they say, that all moneys received, as aforesaid, from the sale or disposition of the said lands, were applied to cost of construction as the work thereof progressed, or to repay moneys procured under the mortgages hereinbefore setforth and used for the construction of, the East Side and West Side railroads.

XI.

These defendants deny that the defendant Oregon & California Railroad Company has repeatedly threatened, or threatened at all, or still threatens, to or will unless restrained therefrom, sell, contract for sale, or in any manner encumber or impair the title of said unsold lands, or any part thereof, in violation of any terms or conditions of the said land-grants, or either of them; and they deny that the said defendant has heretofore cut large or any quantities of timber growing on said unsold lands or has otherwise committed waste thereon, or by contract or otherwise has permitted or invited others so to do, except as accounted for in subdivision "X" hereof; and they deny that the said Company threatens to, or will unless restrained therefrom by this Court, continue to commit waste upon said unsold lands, or any thereof, or particularly as to the timber or other natural products thereof, or will continue to permit, contract for or invite others so to do, to the great or irreparable or any injury of complainant in the premises.

XII.

These defendants admit and say, that prior to the completion of the construction of the Oregon & California Railroad and its connection with the California & Oregon Railroad at the Oregon-California boundary line, and thereafter until about the year 1890 (but not until the year 1894, as stated in the Bill) there was substantially no demand for said granted lands, except for the purpose of settlement or by persons of limited means able to purchase said lands only in small quantities and at reasonable prices; and they admit that nearly all sales made prior to the year1894 were of that character, to persons who purchased lands subject of settlement, and upon or adjacent to which they had established homes; and herein they admit and say that prior to the completion of the said railroad, timber lands, not being susceptible of settlement or the establishing of homes upon, had but little, if any, market value, and could not be sold at any price to any person. They admit that during a large part of said period the defendant Oregon & California Railroad Company maintained an immigration bureau, engaged in inducing immigration and settlement upon such of said lands as were susceptible of actual settlement in good faith, but deny that said Company was not otherwise engaged in soliciting or promoting sales; and they deny that by reason of the premises, or otherwise, the occasional or any violations of terms or conditions of said land-grants or either of them during the said period were concealed or generally unknown, until ascertained by complainant as stated in the Bill; and in this behalf they say that the Oregon & California Railroad Company at all times, openly and to the actual knowledge of all persons concerned, including complainant, disposed of its said lands at the best price obtainable, in quantities desired by applicants to purchase; giving preference to actual settlers in quantities claimed and applied for by them, in the interest of railroad transportation and traffic—but not because of any provision in the said Joint Resolution of April 10th 1869, or Act of May 4th 1870.

They deny that a sudden demand arose for said lands commencing about the year 1894, among wealthy speculators or timber-men; but admit that the greater part of the so-called wrongs and violations complained of in the Bill transpired subsequent to that date. In this behalf they say, that nearly all of the said lands remaining unsold at the time of the completion of the construction of the East Side railroad and its connection with the Central Pacific railroad as aforesaid, were timber-lands, having small market value, and for which there was substantially no demand by purchasers at that time; but soon after transportation for lumber was opened by the completion and connection of the said railroads, the intermediate even-numbered Sections were entered by persons under the Timber-land Act and the commutation provisions of the Homestead Acts, who thereupon conveyed the lands so entered to single holders of many such adjoining tracts; and the increase in value of the Oregon & California Railroad Company's intermediate odd-sections of timber-land, arose out of the said completion and connection of railroads, and the demand therefor at increased and gradually increasing prices arose out of the need of ownership of the odd-sections by the owners of the intermediate even sections, who desired or sought to procure sufficiently large single timber-land holdings to justify the establishment and equipment of lumber mills and factories, to mill and market the timber product of said lands.

They deny that nearly all or that any except a few of the sales consummated after that time were made by executory contracts of sale which were not placed of record or which did not merge into deeds for many years thereafter, or otherwise than shortly thereafter, or that a considerable or other than a small portion thereof are still pending, or that any conveyances for excessive quantities of said lands were not placed of record until recently except as to a few or that many are still unrecorded except a few thereof. And in this behalf, they say that the conveyances relating to the transfer of the said lands both before and after the year 1894 and from the beginning were in the main and in substantial entirety made matters of open, public and continuing record and were matter of general and public knowledge and notoriety, at and about the time of the several and successive conveyances in which the transactions and dealings in respect to the said lands from the beginning were embodied, and continuously ever since, and were well known at all of such times to the Government and Land Department of the United States, and many and most of the contracts of sale, said contracts of sale being followed by such conveyances, were likewise made and continued to be matter of public record and knowledge and within the knowledge of the Government and Land Department of the United States; and they deny that in any instances of sales in excessive quantities (that term being understood herein to mean quantities in excess of 160 acres) the lands were conveyed or attempted to be conveyed by several deeds, each for a small quantity of land, or that thereby the true facts were concealed or that any such or any device of concealment was resorted to; and they say that, on the contrary, while no deed was issued for a lesser quantity than the sale in execution of which it was made, many deeds were issued to assignees of several contracts, in execution by a single deed of several or many executory contracts by apparently one transaction.

They admit and say that on or about January 1st 1903, all of said unsold lands were withdrawn from sale, pending investigation of Land Department transactions of the Oregon & California Railroad Company; but they deny that the said lands, or any thereof, were thereafter converted to certain or any wrongful or unlawful uses or purposes setforth in the Bill, or at all. They deny that, designing to conceal the premises from complainant or the general public, or at all, the defendant Oregon & California Railroad Company, from time to time, or at all, falsely or deceitfully represented that said lands were withdrawn from sale for divers or other temporary reasons, or with the intention of resuming the sale thereof; and they deny that the alleged confusion of the records of said Land Department, or that the alleged destruction of the said records during the San Francisco fire, or other similar or any excuses were used successively, or at all, to conceal the true character of said transaction.

XIII.

These defendants deny that by reason of the premises, otherwise or at all, the several, or any, transactions characterized in the Bill as, or in fact, wrongful or unlawful, were concealed from or unknown to complainant until ascertained as stated in the Bill; and in this behalf they say that all of said transactions were open and notorious, and many if not all thereof actually known to complainant at the times thereof, respectively, or, soon thereafter, and complainant also had constructive notice of all or substantially all of the said transactions at or about the times thereof, respectively, commencing as early as March 1870, and continuously thereafter to the present time. They say that complainant at all times acquiesced in all, and in many instances expressly approved and ratified certain, of the said transactions; a few of the many instances of such acquiescence, approval and ratification, other than those hereinbefore and hereinafter setforth, are shown by "Exhibit No. 9" and "Exhibit No. 10," hereto attached and made part of this Answer. (On September 8, 1911, by order of court the following words were added by way of amendment: And by "Exhibit A" attached to and made a part of this amendment.

Exhibit A

Reference to Reports of Oregon & California Railroad Company to Auditor of Railroad Accounts of the Interior Department, and official Report thereof by Secretary of Interior to Congress as printed in the Annual Report of "Executive Documents" and "House Documents," showing the average and maximum price received from the sale, and asked for the unsold lands, of the said Railroad Company's land-grant lands, during each year from 1879 to 1908, inclusive:

	Lands Sold		Lands Un-sold		Executive Documents	
Year	Average Price Received Per Acre	Maximum Price Received Per Acre	Average Price Asked Per Acre	Maximum Price Asked Per Acre	Vol.	Page
2nd ½ 1879..	$2.39	$15.00	$2.50	$7.00		
1st ½ 1880..	2.28	5.00	2.00	7.00		
2nd ½ 1880..	2.12	5.00	2.50	5.00	10	320
1st ½ 1881..	2.24	10.00	2.00	5.00		
2nd ½ 1881..	2.25	5.00	2.00	10.00		
1st ½ 1882..	2.24	3.50	2.00	15.00	11	471
2nd ½ 1882..	2.25	15.00	2.00	7.00		
1883	2.75	15.00	2.50	7.00		
1884	2.73	15.00	2.50	7.00		
1st ½ 1885..	2.56	15.00	2.50	7.00		
2nd ½ 1885..	2.65	15.00	3.50	7.00		
1885	2.73	15.00	2.50	7.00		

	Lands Sold		Lands Un-sold		House Documents	
Year	Average Price Received Per Acre	Maximum Price Received Per Acre	Average Price Asked Per Acre	Maximum Price Asked Per Acre	Vol.	Page
1st ½ 1886..	$2.99	$15.00	$3.50	$ 7.00		
2nd ½ 1886..	2.99	15.00	3.50	7.00		
1886	2.99	15.00	3.50	7.00	9	596
1st ½ 1887..	3.19	15.00	3.50	7.00		
2nd ½ 1887..	3.40	15.00	3.50	7.00		
1887	3.24	15.00	3.50	7.00	11	1173
1888	3.74	15.00	3.50	10.00	12	454
1889	4.96	15.00	3.50	15.00		
1890	6.32	15.00	3.00	15.00	13	174
1891					16	192
1892	5.61	30.00	3.00	25.00	14	188
1893	4.51	30.00	3.00	25.00	15	130
1894	2.83	30.00	3.00	25.00	16	143
1895	3.49	30.00	3.00	15.00	16	156
1896	3.57	30.00	3.00	15.00	14	166
1897					14	137
1898	3.95	30.00	3.00	15.00	16	152
1899	2.62	30.00	3.00	15.00	20	181
1900	5.02	30.00	3.00	15.00	29	185
1901	5.35	30.00	3.50	15.00	25	218
1902	7.85	30.00	3.50	20.00		
1903	4.22	30.00			21	159]

They admit that "Exhibit L" to the Bill is a correct copy of the original Memorial passed by the Legislature of Oregon on or about February 14th 1907; but say that it does not purport to, and does not, disclose any concealments made or said to have been made by the defendant Oregon & California Railroad Company, and did not and could not have given complainant notice of any of the transactions characterized in the first paragraph on page 53 of the Bill as "concealed from and wholly unknown to" complainant; and in this behalf they say that all such transactions were conducted and made in the usual manner of conducting and making transactions of such character, and no concealment whatever was made or attempted to be made of any thereof. They deny that the said Memorial was made because of any injury inflicted upon the commercial or industrial conditions of the State of Oregon, or because of its having become manifest or of its being in anywise true that any representations made by the defendant Oregon & California Railroad Company, were false; and in this behalf they say that the said Memorial was imposed and procured to be passed by the Oregon Legislature by a few influential politicians for interests personal to themselves and other persons, the facts respecting which are not disclosed therein, nor by the Bill.

They admit that on April 30th 1908, Congress passed the Joint Resolution, a copy of which is setforth on pages 53 and 54 of the Bill, in pursuance of and influenced by the said Memorial; and they admit that this suit was instituted pursuant to the said Joint Resolution; but in making this admission they do not concede, or admit, but on the contrary deny, that this is a suit brought in accordance with the provisions of the said Joint Resolution, or intent of Congress in adopting said Joint Resolution, or is one that the Attorney General has authority to bring in this Court under or in pursuance of the said Joint Resolution, or at all; and they deny that the Bill presents or shows any cause of suit or action which may be properly considered by a Court of Equity.

XIV.

These defendants deny that, because of the several, or any, breaches or violations of any terms, conditions or provisions of the said land-grants, respectively, either of them, or at all, certain or any of the said granted lands or estates therein, have been or are forfeited to the United States, free from any or all right, title, interest, lien or claim of these defendants or of the defendant Union Trust Company, or persons claiming by, through or under them or any of them, otherwise or at all; and in this behalf they say that they (these defendants), and all persons claiming through and under them, have an absolute and indefeasible right and title to all of the said lands and interests in lands described in the said Acts of July 25th 1866, and May 4th, 1870, as granted, or intended to be granted, by them, respectively.

They admit that the Attorney General, but deny that the United States, does by the Bill in this case assert title to lands and estates in lands described on page 55 of the Bill, by reason of alleged forfeiture thereof unto the United States; but they say that the assertion so made has no foundation in fact, nor authority in law; and they deny that the United States has resumed, or has lawful authority to resume, title to all or any of the said lands or interest in lands, pursuant to the said Joint Resolution of April 30th 1908, by the filing of said Bill, or otherwise. They say, upon advice of counsel which they believe to be correct, that were it in anywise true in fact or law, that the said lands or any thereof, or any interest therein, had or have become forfeited unto the United States for breach or violation of some or any condition in grant, the United States has a speedy, adequate and complete remedy at law respecting the same, and no question of fact as to such forfeiture can be enquired into or found, nor can such forfeiture be in anywise enforced, by this Court. Wherefore these defendants, reasserting their demurrer for no equity shown by the Bill, and denying especially the jurisdiction of this Court to hear or determine this cause in so far as it is, or purports to be, a suit to ascertain, determine, or enforce a forfeiture, file this Answer upon protest, and protesting against this Court's jurisdiction submit to trial because they must, under this Court's ruling on demurrer.

They deny that any estates or interests in lands other than the said unsold lands, described or referred to on page 55 of the Bill, have been sold in violation of any term or condition of the said land grants, or either of them; and they deny that any estate or interest therein which has or have been forfeited to the United States is not included in this suit because sold, contracted for sale, or disposed of in violation of any terms or conditions of said land-grants, otherwise or at all, to a large or any number of persons, or because such transactions, or any thereof, include alleged or any rights of succession by purchase, conveyance, mortgage, descent, devise or otherwise, or more than 3,000 or any number of persons, firms or corporations residing in divers or any parts of the United States or other parts of the World, who or which now assert or have some right, title, interest or lien in, to or upon any lands sold, contracted for sale or conveyed in violation of the or any terms or conditions of the said land-grants, or either of them. They say that they have no knowledge or information on the subject, and on that ground deny that the names or places of residence of only a few of the persons, firms or corporations referred to in the Bill are or were known to complainant; and on the same ground they deny that because of multicplicity or complexity of said or any transactions, complainant was unable to ascertain them, any or all of them, in time to include said parties and all of them in this suit; and they deny that the said lands were sold or purchased, or that alleged subesquent rights have been acquired therein, as alleged in the Bill, or at all; and they deny that because of the premises, or at all, it would be inequitable to secure an adjudication of the rights of all or any of said parties by making only a few of them parties defendant as representatives of all or any thereof; and they deny that, to require the making of all of said persons, firms or corporations parties to this suit, or to otherwise require an adjudication herein of their or any of their respective rights in the premises, would indefinitely postpone or ultimately defeat the or any rights, equities or remedies of complainant pertaining to said unsold lands, or any lands; and they deny that the, or any, public interests require a speedy, or complete, or any, adjudication or enforcement, of any relief prayed, asked or suggested by the Bill; and they deny that this suit was brought in a sincere belief or expectation that complainant was entitled to, or could or would obtain the, or any, relief prayed for.

They deny that to the end that justice or equity may be suitably administered in the premises, or at all, this suit was instituted for the purpose of obtaining without unnecessary delay, or at all, an adjudication or enforcement of any rights, equities or remedies of complainant against these defendants, or any of them, pertaining to the said unsold lands, or at all; but say that since the bringing of this suit forty-five separate and further suits have been instituted in this Court by complainant against these defendants and others, for the pretended purpose of asserting and enforcing pretended rights, equities or remedies pertaining to certain of said granted lands duly sold or conveyed by the defendant Oregon & California Railroad Company to such other defendants, in alleged violation of some terms or conditions of the said land-grants, respectively.

XV.

These defendants admit and say, that the property described in the said mortgage deed of July 1st 1887, from the Oregon & California Railroad Company to the Union Trust Company, covered and included all lands granted by the said land-grants which remained unsold on May 12th 1887; and that the property described in said mortgage deed, including the said lands, exceeds in value the amount of bonded indebtedness secured thereby; but they deny that the said property exclusive of the said lands, exceeded in value the amount of said bonded debt, or was ample security therefor, at the time the said mortgage deed was given, or at any time prior thereto.

XVI.

These defendants admit and say, that pursuant to the rules and regulations of the Department of Interior in that behalf duly adopted and in force, all of the aforesaid patents were issued and based upon applications in writing therefor, from time to time filed in the proper land offices of the United States by the defendant Oregon & California Railroad Company, as the assignee (but not as the "successor" otherwise than assignee by deeds of conveyance) of the East Side Company and West Side Company, respectively, by the aforesaid deeds of conveyance; and they admit that each of the said applications contained descriptive lists of the lands so applied for, and an affidavit of the duly authorized Land Agent of the said Company, sworn to by him, alleging that all of the lands so applied for were of the character contemplated by the grant under which they were claimed, and for which patents were applied for as aforesaid; and they admit that the patenting officers of the United States believed the statements made in the said applications and affidavits to be true. But they deny that the said patents, or any of them, were issued solely because of such statements, or affidavits, or belief of any officers of the United States therein; and say that the said patents, and all thereof, were duly issued pursuant to the records of the local and general land offices of the United States, and pursuant to due and diligent inquiry, investigation, report and determination by the proper officers of the United States, as to the true facts and particulars in that behalf which authorized and made it the duty of the said officers to issue the said patents, under and pursuant to the provisions of the said Acts of July 25th 1866, and May 4th 1870, respectively.

XVII.

These defendants say, that the true facts and particulars respecting the matters and things set forth in subdivision "XVII" of the Bill, are as follows:

For the purpose of reserving the right of way, and incidental grants, made by section 3 of the said Act of Congress of July 25th, 1866, and by the first section of the said Act of Congress of May 4th, 1870, and to protect the Oregon & California Railroad Company against such, if any, reservation as was made by the United States by inserting a clause in patents issued to said Company containing a clause "excepting and excluding all mineral land should any be found in the tracts aforesaid," the contracts and conveyances issued by the said

Company prior to about the year 1894, contained (substantially) the following reservation:

> "Reserving, however, a strip of land 100 feet wide, to be used by the Oregon and California Railroad Company for right of way or other railroad purposes, when the railroad of said Oregon and California Railroad Company or any of its branches is or shall be located upon the premises, and the right to use all water needed for the operating and repair of said railroad, and also reserving all claim of the United States to the same as mineral land."

By the case of *Davis' Adm'r* vs. *Weibold,* reported in 139 U. S. 507 *et seq.*, the United States Supreme Court held (in effect) the said clause in patent "excepting and reserving all mineral lands" to be void and of no effect; and the same Court, on May 26th 1894, in *Barden* vs. *Nor. Pac.,* reported in 154 U. S. 288 *et seq.,* held (in effect) that minerals discovered in railroad land-grant lands after the issuance of patent therefor inured to the benefit of the Railroad Company under and by virtue of such patent. Thereupon the last clause of the above-quoted reservation, in contracts and conveyances issued by said Company, was changed by striking out the words "and also reserving all claim of the United States to the same as mineral land," and thereafter, but not until about the year 1902, the words: "and also reserving and excepting from said described premises so much thereof as may be mineral lands" was substituted for the said stricken out words.

They deny that said reservation, or any thereof, create a permanent estate or permanent estates in favor of the Oregon & California Railroad Company or these defendants in or to a large or any part of said granted lands in violation or breach of any terms or conditions of the said land-grants, or either of them, or that they or either or any of them are in anywise null or void. They admit and say that the Oregon & California Railroad Company claims absolute and indefeasible ownership (but not merely "some inchoate right, title or interest") in and to the premises so reserved; and deny that such ownership, or any right, title, or interest therein, is subject to the or any right of forfeiture or right, equity or remedy of complainant set forth in the bill, or which complainant has or at any time since the making of said grants, respectively, had.

XVIII.

These defendants admit and say that the defendant Oregon & California Railroad Company is, and claims to be, the owner of all of the said granted lands, patented and unpatented, not heretofore sold and transferred by its deeds of conveyance, together with all right of way and other rights and property granted by Section 8 of the said Act of July 25th 1866 and the first section of the said Act of May 4th 1870, and all rights and property reserved as aforesaid for any and all railroad purposes, and the improvements upon all of the said lands and property; and they admit and say that all of the said land and property is subject to the lien of the aforesaid Union Trust Company mortgage deed of July 1st 1887. They deny that any or all of such rights, titles, interests or liens were, or are, subject to any right of forfeiture, or to any other rights, equities or remedies of complainant, asserted or attempted to be asserted by the Bill herein, or which complainant has or at any time since the making of said grants, respectively, had.

XIX.

These defendants admit that "Exhibit M" attached to the Bill is, substantially, correct, in a general way, except that (a) the map of definite location from Jefferson to the south line of Township 27 South, Range 6 West, was filed on March 26th 1870, instead of March 29th 1870, as therein stated; (b) the map of definite location from the last-mentioned point to a point in Township 30 South, Range 5 West was filed on January 7th 1871, instead of March 2nd 1871, as therein stated; and (c) the map of definite location from the last-mentioned point to connection with the California & Oregon railroad was filed on August 18th 1884, instead of August 20th 1884, as therein stated.

They admit and say that "Exhibit N" attached to the Bill is, substantially, correct, in a general way, except that (a) the Commissioners' favorable report on the 7th, 8th and 9th sections of the East Side railroad was made on December 27th 1876, instead of July 10th 1878, as stated therein; (b) that the Commissioners' favorable report on the 10th section of the said railroad was made on August 6th 1883, instead of August 29th

1883 as stated therein; (c) that the Commissioners' report on the 11th section of said railroad was approved on January 3rd 1887, instead of January 29th 1887, as stated therein; and (d) that the Commissioners' report on the last section of said railroad was approved on April 18th 1889, instead of November 8th 1889, as therein stated.

They say that "Exhibit O" attached to the Bill is incorrect in so many particulars that "Exhibit No. 11" is hereto attached, and made part hereof, in correction thereof; and in this behalf they say that all the facts and figures given in "Exhibit No. 11" to this Answer are true and correct, according to the records of the Land Department of the defendant Oregon & California Railroad Company, and information and belief of these defendants.

XX.

These defendants admit that "Exhibit P" attached to the Bill gives a correct list of the suits referred to, and that in so far as relevant or material to the purposes or requirements of this Answer subdivision "XX" of the Bill sufficiently states with reasonable accuracy the allegations and substance of the complainants filed in those suits. In this behalf they say that on or about December ——— 1908, all of the said suits other than the one brought by Roy W. Minkler were consolidated with this suit No. 3340; that thereafter, on or about January 15th 1909, all the persons other than the said Roy W. Minkler named as complainants in "Exhibit P" to the Bill, filed herein their cross-complaints, each and all of which was and were dismissed by the order of this Court made and entered on April 24th, 1911; and that on or about June 9th 1910, the said suit brought by Roy W. Minkler was duly dismissed by mutual consent of the parties thereto.

XXI.

These defendants say, that from the time of the making of said grants of land to the East Side Company and West Side Company, owned by the defendant Oregon & California Railroad Company since 1870 as to the East Side grant and since 1880 as to the West Side grant, about forty years has elapsed during which the United States has had actual and constructive notice, as hereinbefore set forth, of sales of lands thereof in quantities in excess of 160 acres to one purchaser other than an actual settler, at prices in excess of $2.50 per acre; during all of which time the United States, as hereinbefore stated, remained silent and apparently acquiesced in such sales.

During all of said time the United States has accepted and approved the said railroads as constructed, and has demanded and accepted (since as well as at all times before commencement of this suit) the free use and benefit of the said railroads in the transportation of troops and munitions of war, of the approximate total value of $1,000,000.

Because of the said acceptance, approval and use of the said railroads, and relying on the acquiscence of the United States in such sales, the defendant Oregon &

California has paid taxes on the said unsold lands to the amount of $1,827,234.10 as aforesaid, and the other costs and expenses set forth in subdivision "X" hereof, including the payment of $145,977.26 unto the United States for the costs of surveying and patenting of the said lands; no part of any of which sums has been paid, repaid or tendered to these defendants or any of them.

And because of the said acceptance, approval and use of the said railroads, and reliance on the said acquiescence of the United States, the defendant Southern Pacific Company guaranteed the payment of (approximately) $17,500,000 in bonds still outstanding, issued and sold under the Trust Mortgage of July 1st, 1887, covering the said lands, as hereinbefore set forth.

XXII.

These defendants say that any and all causes of suit or action setforth in the Bill, are barred as follows:

(a). By section 391 of Lord's Oregon Laws.

(b). By section 8 of the Act of Congress approved March 3rd 1891, entitled "An Act to amend section 8 of an Act approved March 3rd 1891, entitled 'An Act to repeal Timber-culture laws, and for other purposes.'" published in Vol. 26, U. S. Statutes at Large, page 1093.

(c). By the first section of the Act of Congress approved March 2nd 1896, entitled "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents, and for other purposes," published in Vol. 29, U. S. Statutes at Large, page 42.

(d). By acquiescence, and laches, of complainant.

(Amendment allowed by leave of court, April 28, 1913, as follows:

That during all the times mentioned in the Bill of Complaint, and particularly from and after the 20th day of May, 1872, down to April 30, 1908, the United States well knew that the Oregon and California Railroad Company, and its predecessors in interest, had continuously and uniformly claimed to own said land grants in fee simple without any condition as to the sale of said lands, and as earned by construction of said roads, and had sold, mortgaged and conveyed the same to secure funds for the construction of said roads, and to refund said indebtedness for said construction funds, by the execution of certain of the mortgages described in said Bill of Complaint, and other mortgages, and the negotiation and sale of bonds issued thereunder, and that the said present outstanding stock of the said Oregon and California Railroad Company was issued and delivered to the owners and holders of the mortgage bonds issued and sold under said mortgage of April 15, 1870, and in satisfaction of said mortgage, and that the proceeds of said bonds were used in the construction of the first 198 miles of the East Side road and of said 47½ miles of said West Side road, and the United States during all said time from May 20, 1872, down to April 30, 1908, well knew the way and manner in which said Oregon and California Railroad Company continuously and uniformly was administering and had administered said land grants, and was selling and had sold said land granted by said Acts of Congress, and during all said times well knew that said company was selling and had sold said lands so sold by it without any particular regard to the alleged limitations or restrictions of said Act of April 10, 1869, or said Section 4 of said Act of May 4, 1870, except insofar as the same may be construed to apply to actual settlers upon any of said lands prior to completion of the separate sections of said roads and the acceptance thereof by the United States, as provided by said Act of July 25, 1866, and said act of May 4, 1870, and the direction of the President to issue patents for the lands so earned, and that notwithstanding such knowledge during all said time between May 20, 1872, and April 30, 1908, of all said matters. and of all the matters and things alleged in the Bill of Complaint as pretended breaches of the provisions of said Act of April 10, 1869, and Section 4 of said Act of May 4, 1870, and notwithstanding such knowledge during all said time of all the matters and things alleged in the Joint and Several Answer of the defendants, as heretofore filed and amended, the United States, from said May 20, 1872, to April 30, 1908, asserted no claim of any breach, made no objection to the execution of said deeds, mortgages or conveyances, or to any action of the company in respect to the administration of said grants, or either of them, or the sale of any lands thereby granted, and in no wise asserted any claim that the company was at any time misconstruing said acts, or either thereof, or in any way was violating or had violated said Act of April 10, 1869, or said Section 4 of said Act of May 4, 1870, but on the contrary the United States permitted and allowed the company to mortgage said lands to secure said construction funds so borrowed and used, as aforesaid, and permitted and allowed the company to expend large sums of money in surveying fees and other fees paid to the United States, and to expend large sums of money in taxes upon said lands, and in advertising said lands for sale, and in examining, cruising and grading said lands as timber lands, and also large sums of money in completing said railroad in the first instance from Portland to Roseburg, Oregon, and next in extending the same from Roseburg to Ashland, Oregon, and finally in completing the same to the Oregon and California State line, and also in completing said railroad from Portland to McMinnville, Oregon, and during all said times the United States exacted from said company, and said company furnished, the free transportation of the troops and property of the United States, as required by said Act of July 25, 1866, at the cost and expense of said company, aggregating a sum in excess of $600,000.00; that relying upon the acquiescence and action of the United States, as aforesaid, the Oregon and California Railroad Company expended all said sums, as aforesaid, incurred all said liabilities, and so mortgaged, sold and conveyed said lands, claiming to own the same in fee simple without any condition; applied for, accepted and placed of record all the patents issued by the United States for such lands, and so sold and conveyed to purchasers such portions of said granted lands as alleged in said Bill of Complaint, and has applied the proceeds of said sales, and of all sales of said lands, to the redemption of said bonds so issued to secure said construction funds:

That on the 31st day of July, 1885, the Oregon and California Railroad Company and Central Pacific Railroad Company, relying upon the said acquiescence and action of the United States, as aforesaid, executed and delivered the agreement of that date, identified as Exhibit No. 9 to the Stipulation as to the Facts on file herein and which is made a part hereof, and to which reference is made as if the same were fully written herein; and on October 11, 1886, said Central Pacific Railroad Company, the Pacific Improvement Company, and the Southern Pacific Company, relying upon the said acquiescence and action of the United States, as aforesaid, executed and delivered the agreement of that date, identified as Exhibit No. 1 to the Joint and Several Answer of the defendants herein and which is made a part hereof, and to which reference is made as if the same were fully written herein; and on March 28, 1887, the Stockholders' Reconstruction Committee of the Oregon and California Railroad Company, the London Bondholders' Committee, the Frankfort Bondholders' Committee, the Southern Pacific Company and the Union Trust Company, relying upon the said acquiescence and action of the United States, as aforesaid, executed and delivered the agreement of that date, identified as Exhibit "E" to the Bill of Complaint, and which is made a part hereof, and to which reference is made as if the same were fully written herein, and thereafter the parties to all said agreements, relying upon the said acquiescence and action of the United States, as aforesaid, consummated, carried out and performed said several agreements, and in pursuance thereof, and in reliance upon said acquiescence and action of the United States, as aforesaid, the said Oregon and California Railroad Company executed and delivered, on January 3, 1888, its said mortgage and trust deed of date July 1, 1887, to the Union Trust Company, and issued and delivered its bonds thereunder to the amount of $20,000,000.00, and said Southern Pacific Company, being the owner of all the stock of the Central Pacific Railroad Company, caused said Pacific Improvement Company and the Central Pacific Railroad Company to purchase the said stock of the Oregon and California Railroad Company for its benefit, and otherwise carried out said agreements, and then and there guaranteed to pay the principal and interest of all said bonds so issued and to be issued by said Oregon and California Railroad Company; that in reliance upon said acquiescence and action of the United States, as aforesaid, the Southern Pacific Company thereby purchased and became the owner of all said stock of the Oregon and California Railroad Company and assumed the debts and liabilities of the Oregon and California Railroad Company and caused said railroad to be constructed to the Oregon and California state line, and thereby guaranteed to pay all said bonds, principal and interest, and became the beneficial owner of all said granted lands then unsold, and but for said acquiescence and action of the United States, as aforesaid, said Southern Pacific Company would not have purchased said stock nor assumed said debts and liabilities nor caused said road to be constructed to completion nor guaranteed said bonds, principal or interest, and the Oregon and California Railroad Company would have been unable to sell or dispose of its railroad or said land grants, or either of them, or completed said railroad, as required by said Act of Congress, and its creditors would have been compelled to foreclose said existing mortgage securing the then outstanding bonds and sell all said property, to the great injury and loss of said company and its creditors, and to the great injury and loss of the United States. That the United States, from July 31, 1885, up to April 30, 1908, and during all said time, well knew of the existence of all of said agreements, including the said mortgage of date July 1, 1887, and of the purpose and intention of all the parties thereto, and of all the matters and things hereinbefore set out, and notwithstanding such knowledge during all of said time from July 31, 1885, to April 30, 1908, and of all the matters and things alleged in the Bill of Complaint as pretended breaches of the provisions of said Act of April 10, 1869, and Section 4 of said Act of May 4, 1870, asserted no claim of any breach, made no objection to the execution or performance of either of said contracts or of the execution of said mortgage of date July 1, 1887, or to any action of the Oregon and California Railroad Company in respect to the administration of said grants, or either of them, or the sale of the lands thereby granted, and in no wise asserted any claim that the company was at any time misconstruing said acts, or either of them, or was in any way violating or had violated said Act of April 10, 1869, or said Section 4 of said Act of May 4, 1870.

That from time to time the United States caused to be enacted divers and various statutes affecting said Act of July 25, 1866, as amended April 10, 1869, and said Act of May 4, 1870, some of which are the Act of May 3, 1879, (20 Stat. 472) by which homestead settlers on the even sections within the limits of said grant, could enter 160 acres instead of 80 acres; the Timber and Stone Act of June 3, 1878, (20 Stat. 89) by which the lands of the United States in the even sections within the limits of the grant, could be purchased at $2.50 per acre, in quantities of 160 acres, without any settlement, by any citizens, or any person who had declared his intention to become a citizen of the United States; and the Act of March 3, 1891, (26 Stat. 1097) by which the pre-emption laws were repealed; and the act of June 4, 1897, (30 Stat. 1136) by which lands owned by any one within forest reserves of the United States, could be reconveyed to the United States, and thereby exchanged for the even sections within the limits of said grants, without any settlement thereon; and the Act of February 10, 1909, (35 Stat. 639); and the Act of June 17, 1910, (36 Stat. 531); and the Act of June 6, 1912, (37

Stat. 123), all amending the Homestead Act of M
20, 1862, (12 Stat. 392); that said statutes and the d
administration of the same, as applied to the charac
and class of lands involved in this suit, which are chie
valuable for timber and are unfit for settlement, a
all lands belonging to the company now unsold, ha
prevented the company from further compliance w
the provisions of said Act of April 10, 1869, or s
Section 4 of said Act of May 4, 1870, than as alleged
the Bill of Complaint.

That on August 20, 1912, Congress passed an A
Public No. 278, H. R. 22002, approved that date, e
titled, "An Act supplementing the Joint Resolution
Congress, approved April 30, 1908, entitled, 'Joint R
olution instructing the Attorney General to instit
certain proceedings, etc.,' " whereby the United Stat
in substance and effect, waived the alleged breaches
said Act of April 10, 1869, and Section 4 of said A
of May 4, 1870, as to all the lands described in the B
of Complaint and now owned by the Oregon and Ca
fornia Railroad Company, and particularly as to all sa
lands sold to persons other than actual settlers, in qua
tities of 1000 acres or more, and aggregating abo
400,000 acres, and particularly described in forty-fi
suits brought by the United States against said pu
chasers and these defendants in this court, to which sa
suits and the proceedings therein, reference is here ma
as if the same were fully written herein and made a pa
hereof, and whereby the United States has agreed
convey by patent all said lands to said so-called innoce

purchasers in said suits for $2.50 per acre, and whereby the United States has so waived said alleged breaches and so agreed to sell and convey said lands because said lands are and were at the time of such sales so made by the company, unfit for settlement or cultivation and not adapted to entry or settlement under the settlement laws of the United States or under said Act of April 10, 1869, or Section 4 of said Act of May 4, 1870, and because said lands are and were at the time of such sales, chiefly valuable for timber.

That but for the said acquiescence and action of the United States, as aforesaid, said Oregon and California Railroad Company would not have expended said sums, as aforesaid, or otherwise done as it has done, as aforesaid.

And the defendants therefore say and allege that by reason of all the matters, things and acts hereinafter set out, and by reason of the matters and things in the premises, alleged in their said Joint and Several Answer, as heretofore amended and now herein amended, the United States has fully, effectually and finally exercised and waived any and all right it may have had at any time to claim or assert forfeiture of any lands of the said grants, and is and of right ought to be estopped from having or asserting any such or any claim of forfeiture.)

XXIII.

These defendants further say, that by reason of the matters, things and premises aforesaid, and by reason of the passage by Congress of the Act approved January

31st, 1885, entitled "An Act to declare forfeiture of certain lands granted to aid in the construction of a railroad in Oregon," made part of this Answer by reference to it as published in Vol. 23, U. S. Statutes at Large, page 296, and the passage by Congress of the Act approved September 29th, 1890, entitled "An Act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes," made part of this Answer by reference to it as published in Vol. 26, U. S. Statutes at Large, page 496 and following, the United States fully and finally exercised and waived any and all right it may have had to claim or assert forfeiture of any lands of the said East Side grant or West Side grant, and is thereby estopped from having or asserting any such claim or forfeiture.

Wherefore, these defendants having fully answered, confessed, traversed and avoided or denied all the material matters in said Bill according to their best knowledge, information and belief, pray that they may be hence dismissed, with their reasonable costs and charges so unjustly sustained.

OREGON & CALIFORNIA RAILROAD COMPANY,
By W. W. Cotton, its Secretary.

SOUTHERN PACIFIC COMPANY,
By W. F. Ingram, its Assistant Secretary.

STEPHEN T. GAGE, as Trustee.
STEPHEN T. GAGE, Individually.
P. F. DUNNE,
WM. D. FENTON,
WM. SINGER, JR.,

Attorneys for the Defendants Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage.

Wm. F. Herrin,

Counsel for said Defendants.

(Corporate Seal.)

State of Oregon,
County of Multnomah. } ss.

W. W. Cotton, being duly sworn deposes and says: That he is Secretary of the Oregon & California Railroad Company, the principal defendant to the foregoing Answer; that he has read and knows the contents of the foregoing Answer; that the allegations thereof, in so far as they relate to his own acts and deeds, are true; and in so far as they relate to the acts and deeds of others, he has been informed that they are and believes them to be true.

W. W. Cotton.

Subscribed and sworn to before me on September 5th, 1911.

Kenneth L. Fenton,

Notary Public in and for Multnomah County, Oregon.

State of California,
City and County of San Francisco. } ss.

W. F. Ingram, being duly sworn deposes and says: That he is Assistant Secretary of the Southern Pacific Company, one of the defendants to the foregoing Answer; that he has read and knows the contents of the foregoing Answer; that the allegations thereof, in so far as they relate to his own acts and deeds, are true; and in so far as they relate to the acts and deeds of others, he has been informed that they are and believes them to be true.

W. F. INGRAM.

Subscribed and sworn to before me on September 2nd, 1911,

E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.
(Seal.)

State of California,
City and County of San Francisco. } ss.

Stephen T. Gage, being duly sworn, deposes and says: That he is one of the defendants to the foregoing Answer; that he knows the contents of the foregoing Answer; that the allegations thereof, in so far as they relate to his own acts and deeds, are true; and in so far as they relate to the acts and deeds of others, he has been informed that they are and believes them to be true.

STEPHEN T. GAGE.

Subscribed and sworn to before me on September 2nd, 1911,

HUGH. T. SIME,
Notary Public in and for the City and County of San Francisco, State of California.
(Seal.)

Exhibit No. 1

This Agreement, made and entered into on the eleventh day of October, 1886, between the Central Pacific Railroad Company, party of the first part, the Pacific Improvement Company, party of the second part, and the Southern Pacific Company, party of the third part, Witnesseth:

That Whereas: The Central Pacific Railroad Company is the succesor in interest of the California and Oregon Railroad Company, mentioned in the act of Congress of July 25, 1866, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph Line from the Central Pacific Railroad, in California to Portland, in Oregon"; and

Whereas, the said Central Pacific Railroad Company has constructed a portion of the line contemplated by said Act of Congress, to-wit, that portion between Roseville Junction on the Central Pacific Railroad, and the town of Delta; and

Whereas, about one hundred and four miles of the line between Roseville Junction and the Southern boundary line of Oregon, as contemplated in said Act of Congress has not been constructed; and

Whereas, the Oregon and California Railroad Company, charged by said Act of Congress with the construction of that portion of the said line of railroad between Portland in Oregon, and the Northern boundary line of California, has been in an embarrassed condition, and has been unable to complete its road to said boundary line; and

Whereas, until the whole of said line is completed making a through connection between Portland in Oregon and the City of San Francisco in California, no part of said line can be advantageously or profitably operated, nor the Act of Congress in relation thereto be carried into effect according to the spirit and intent thereof, to wit, the construction and maintenance of a continuous Railroad between the said Cities, which the Government of the United States may use for the transportation of its property, troops and munitions of war when necessary, and to aid in the construction of which has granted quantities of the Public lands; and

Whereas, the completion by the said Central Pacific Railroad Company of its own road to the Southern boundary line of Oregon without assurance of the completion of that portion of the road from Portland to said boundary line would be a waste of money, the road having to be constructed through a rugged and mountainous country at great expense and without sustaining local traffic; and

Whereas, it is of the greatest importance to the Central Pacific Railroad Company, that it should have an opening into Oregon both for local traffic and the through business of the two Cities and also to furnish business for its entire line from Ogden. *Now Therefore*:

for the purpose of completing its said road, and of securing the completion of the road between the California State Line and Portland, Oregon, thus making a through line between said Cities of Portland and San Francisco, and a connection with the Union Pacific Railroad at Ogden, and in order to secure the business of the Northern portion of the State of California and as much as possible of the business of the State of Oregon and to bring such business to its line from Ogden, and for the purpose and with the intent of carrying into effect the provisions of said Act of Congress, the said Central Pacific Railroad Company, hereby covenants and agrees with the said Pacific Improvement Company;

First: That the said Pacific Improvement Company shall in a good workmanlike manner construct, finish, furnish and complete the Railroad and Telegraph Line of the said Central Pacific Railroad Company, commencing at a point near the said town of Delta and running thence in a general Northerly direction by the most practicable route to a point on the Southern boundary line of Oregon, there to connect with the road of the said Oregon and California Company a distance of one hundred and four miles, as near as may be together with the rolling stock, buildings, instruments, and fixtures thereof; that is to say, to construct, finish and complete all the clearing, grading, excavations, embankments, ditches, drains, masonry, culverts, bridges, trestling and necessary fencing, and furnish all the ties, timber, rails, all the chairs, fish-plates, spikes, frogs and switches, lay and complete all the main line of track and all side tracks, spur-tracks, and turnout necessary, usual and proper for a single track railroad; also all necessary and proper buildings and erections for stations, freight and passenger depots, water-tanks, turntables, engine houses, section houses, work and repair shops, with all the tools, furniture and implements necessary and proper therefor, also to furnish and place on said railroad all necessary and proper rolling stock instruments and equipments, including locomotives, passenger, box, freight, baggage, platform, dump and hand cars, for the proper and successful working and repairing of said Railroad and Telegraph Line, said rolling stock to be furnished and delivered, as the same may be required by the said Central Pacific Railroad Company not to exceed the following quantity and proportion, namely, one locomotive for every eight miles of road constructed under the contract; one passenger car for every five miles of road, three box and flat cars for every mile of road; the proportion of each to be determined by the said Central Pacific Railroad Company, one hand car for every six miles of road; such number of dump cars as may be required for maintaining the line, said railroad to be constructed and complete to a point at or near Klamath River within twelve months from the date hereof, and to the Southern boundary line of Oregon as soon as the said Oregon and California Railroad is completed to said line.

Second: That the said Pacific Improvement Company, shall furnish and pay for all the engineer service necessary or requisite for the location and construction of said railroad and its appurtenances, such location and construction to be subject to the approval of the President or Chief Engineer of said Central Pacific Railroad Company, who may direct such changes to be made as they may deem proper; But, the salary of the Chief Engineer shall be paid by the said Central Pacific Railroad Company.

Third: That the said Pacific Improvement Company, will pay all the costs, damages and other expenses incurred in obtaining right of way for the construction of said road and to that end the Central Pacific Railroad Company agrees that it may use the name of the said Company in any legal steps found necessary to be taken in securing such right of way.

Fourth: That the said Pacific Improvement Company will within a reasonable time and as soon as it can be done to the best advantage purchase, obtain possession and control of the said Oregon and California Railroad, or, that it will within a reasonable time purchase the whole of, or a majority of the shares of the Capital Stock of said Oregon and California Railroad Company, and in either event will within a reasonable time complete or cause to be completed, the said Oregon and California Railroad, to a connection with the Central Pacific Railroad at a point on the boundary line between California and Oregon, and as the case may be will enter into or will cause the said Oregon and Califor-

nia Railroad Company to enter into a contract perpet
with the said Central Pacific Railroad Company, its s
cessors or assigns, that the said Oregon and Califor
Railroad shall be operated in harmony with the s
Central Pacific Ralroad, prorating for services and c
enanting therein never to give to any other railroad co
pany any better terms for through traffic and for
interchange of business than it gives to the Central
cific Railroad Company, its successors or assigns.

Fifth: That the said Pacific Improvement Co
pany shall and will repay to the said Central Pac
Railroad Company within one hundred and twenty da
from the date hereof all sums of money with inter
thereon, at the rate of six per cent per annum here
fore by the said railroad company expended upon t
portion of its aforesaid line of Railroad and Telegra
Line lying north of Delta, and that if said railroad co
pany has not fully paid all the costs and expenses
curred as aforesaid, the said improvement company
assume the whole thereof and will upon demand
off and discharge the same, or that if the said railro
company is compelled to pay the same or any part the
of the said Improvement Company will within one h
dred and twenty days after notice thereof, repay to
said railroad company the full amount of any such p
ment or payments, with interest at the rate aforesa
and

The said Southern Pacific Company lessee of
said Central Pacific Railroad Company hereby co

nants and agrees with the other parties to this contract that in consideration of the advantages to be derived by it from the bringing of business to the main lines of the Central Pacific Railroad, it will when said through line is completed, finished and ready for operation enter into an agreement in writing with the said Central Pacific Railroad Company whereby it shall lease from said Company that portion of said line between Roseville Junction and the State Line not now included within its lease and will increase the consideration of twelve hundred thousand dollars, guaranteed rental mentioned in the existing lease as much in proportion as eighty thousand shares of the Capital Stock of said Central Pacific Road shall bear to the whole amount of capital of said company now issued, and will also increase the limit of the maximum rental of thirty-six hundred thousand dollars therein provided for in like proportion, and that it will transport and convey free of charge over the lines operated by it in California north of San Francisco all agents, laborers and employes and all provisions, tools, iron and other materials and all other property employed or used, or to be employed or used in and about the construction of said Railroad and Telegraph Line, and their appurtenances by or for said Pacific Improvement Company; and

The said Central Pacific Railroad Company hereby covenants and agrees to and with the said Pacific Improvement Company that in consideration of the premises and of the faithful performance of the covenants herein contained to be kept, observed and performed by said Pacific Improvement Company, it will upon the execution of this agreement issue and deliver to said company eighty thousand shares of its capital stock and in addition thereto it will pay to said Pacific Improvement Company four million five hundred thousand dollars, in mortgage bonds as follows: when one-half of the work on said road between Delta and the Oregon Line is completed, it will pay and deliver to said Pacific Improvement Company all of its first mortgage bonds now un-issued part of an issue by it heretofore provided for, to be used toward the construction of its railroad between Roseville Junction and said Oregon Line, and that it will pay to said Pacific Improvement Company the balance of said four million five hundred thousand dollars of bonds in its mortgage bonds, part of an issue by it provided for an Indenture of mortgage by it made to William E. Brown, and Frank S. Douty, bearing date October First, 1886, and that it will make said last mentioned payment as the work on said road progresses, and sections of not less than ten miles between Delta and the Oregon State Line are completed and in the proportion which the completed section shall bear to the whole length of the road between the points last aforesaid.

In Testimony Whereof, The parties hereto have caused these presents to be signed by the respective Presidents and Secretaries, and their corporate seals to be hereunto affixed. Done in triplicate the day and year first herein written.

Exhibit No. 2

This Agreement, made and entered into this seventeenth (17) day of February, 1885, between the Southern Pacific Company, a corporation duly organized and existing under the laws of the State of Kentucky, and now doing business in the State of California, and the Central Pacific Railroad Company, a corporation duly formed and existing under the laws of the State of California and the United States, witnesseth:

That Whereas part of the through business heretofore done by the Central Pacific Railroad Company's line from Ogden to the waters of the Pacific has been diverted by the Northern Pacific, Atlantic and Pacific, and Atchison, Topeka and Santa Fe railroads;

And Whereas the Union Pacific Railroad Company has secured the control of the road known as the Oregon Short Line, and thereby secured an outlet to the Pacific, other than over the Central Pacific Railroad, and thus in that respect placed itself in opposition to the interests of the Central Pacific;

And Whereas it now appears that the through business, hitherto done by the Central Pacific Railroad, will thereby be further diverted; and that it is not only to the best interests of, but absolutely necessary that, the Central Pacific Railroad Company, in order to maintain itself against these diversions, should be operated in connection with a friendly through line to the waters of the Atlantic;

And Whereas the said Southern Pacific Company has a line of railroad under its control, for a period of ninety-nine years extending continuously from the Pacific Ocean to the Atlantic Ocean;

And Whereas the lines of each company are doing a large local traffic, and it is important to both that the same should be conducted in harmony;

And Whereas the said Southern Pacific Company is willing to enter into an agreement with the Central Pacific Railroad Company where its line and the line of the said Southern Pacific Company shall be operated so as to secure their just rights to each without the one gaining any benefit or advantage at the expense of the other, and whereby the Central Pacific Railroad Company may for a long term of years be assured of protection against the diversion of its traffic and be relieved of the disadvantages flowing from lack of harmonious connections;

And Whereas by reason of the facts before recited it is mutually advantageous to the Southern Pacific Company and the Central Pacific Railroad Company to make such agreement;

And Whereas both companies contract in the knowledge that the future development of the country may change materially the relations of the companies to each other in respect to railroad traffic, and may in the future render any agreement now made, however fair in its terms in view of existing conditions, advantageous to one at the expense of the other, and thereby defeat the purposes which said companies desire and intend to accomplish by making this agreement;

And Whereas it is intended that such shall never be the effect of this agrement, therefore all the promises and covenants herein shall be construed in the light of the conditions now existing, and the arbitrators hereinafter named, in adjusting the terms and provisions of this agreement to a changed state of affairs, if such change should ever take place, must keep in view the main purpose of the parties to this agreement, to wit, that it is for the mutual advantage of both parties, and that neither is to be benefited at the expense of the other;

Now, Therefore, to accomplish the purposes aforesaid, in consideration of the premises and of the mutual promises herein, the said Central Pacific Railroad Company hereby leases to the said Southern Pacific Company, for the term of ninety-nine years, from the first day of April, A. D. 1885, the whole of its railroad situated in the Territory of Utah and States of Nevada and California, and known and designated as the Central Pacific Railroad, together with all the branches thereof, together with all the rolling stock, telegraph lines, steamboats, wharves, piers, depots, workshops, and all other property, real and personal, now owned, held, and possessed by the said Central Pacific Railroad Company and used upon, or in connection with, said railroad and telegraph lines, together with all the appurtenances thereunto belonging, with the right to possess, maintain, use, operate and enjoy the said property, and to receive the rents, issues, and profits thereof.

And the said Central Pacific Railroad Company hereby assigns to the said Southern Pacific Company all the leases which it now holds of railroads and other property situated in said State of California, and lying and being north of the town of Goshen, in the County of Tulare, with the right to take, hold, operate, maintain and enjoy said railroads and other property in the same manner as the said Central Pacific Railroad Company holds, operates, enjoys, and maintains the same under the said leases, and with the right to receive the rents, issues, and profits thereof.

And the said Central Pacific Railroad Company hereby releases the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the United States and of the State of California, and the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the Territory of Arizona, and the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the Territory of New Mexico, and each of them, from all and every obligation under or by virtue of any and every lease made by said three last-mentioned railroad Companies, or either of them, to the said Central Pacific Railroad Company, and transfers and surrenders unto the said Southern Pacific Company, the possession of all the property in said leases, or any of them mentioned or described, with the right to receive the rents, issues, and profits thereof free from all claim of the said Central Pacific Railroad Company to the same or any part thereof.

The said Southern Pacific Company agrees to and with the said Central Pacific Railroad Company that it will keep and maintain the property hereby leased in good order, condition, and repair; operate, maintain, add to, and better the same, at its own expense; pay all taxes legally assessed against or levied thereon, and will at the termination of this lease return the same to the said Central Pacific Railroad Company, or to its successors or assigns (with additions and betterments) in as good condition and repair as the same was at the date hereof.

And the said Southern Pacific Company hereby agrees to and with the said Central Pacific Railroad Company that it hereby assumes and will discharge all the liabilities and obligations of every kind (including its obligations on leases now held by it) of the said railroad company, except the obligation to pay the principal of said railroad company's indebtedness known as its "floating debt," and accept the obligation to pay the principal of the indebtedness of said railroad company known as its "bonded indebtedness," now outstanding and secured by mortgage or deed of trust, or which may be hereafter incurred under the provisions of any existing mortgage or deed of trust, or of any mortgage or deed of trust hereafter made with the consent of the Southern Pacific Company; and except the principal of all indebtedness the payment of which has heretofore been guaranteed by the Central Pacific Railroad Company; and except the principal of the indebtedness of the said Central Pacific Railroad Company evidenced by bonds of the United States heretofore by the government thereof loaned to the said Central Pacific Railroad Company. That as to such excepted indebtedness the said Southern Pacific Company will pay off and discharge at maturity the interest upon the same, except the interest upon the bonds of the United States loaned as aforesaid; and that, as to such bonds and the interest thereon, the said Southern Pacific Company will discharge the annual obligations imposed upon said Central Pacific Railroad Company by existing acts of Congress, and will during the continuance of this agreement, fully comply with the terms of, perform all the duties prescribed in, and discharge all the obligations imposed upon said Central Pacific Railroad Company by the act of Congress commonly known as the "Thurman Act."

And the said Southern Pacific Company hereby agrees to and with the said Central Pacific Railroad Company that it will well and truly perform all the duties and obligations of said railroad company to the United States and the Government thereof under existing acts of Congress relating to the maintenance and operation of its railroad, and to transportation for said Government over the same, as fully and faithfuly as said railroad company is bound to do, except as otherwise hereinbefore provided.

And the said Southern Pacific Company agrees to and with the said Central Pacific Railroad Company that it will keep true and faithful accounts of all the earnings of the said Central Pacific Railroad, including the earnings of the railroads now held by said Central Pacific Railroad Company under leases and situated north of Goshen, together with true and faithful accounts of all expenditures, payments and disbursements of every kind made by the said Southern Pacific Company in operating, maintaining, adding to, and bettering the same, and of all expenditures, payments, and disbursements made by the said Southern Pacific Company for taxes, rentals, interests, or in discharge of obligations incurred by said Southern Pacific Company under the provisions of this agreement hereinbefore contained: *Provided, however,* that any payments made by the said Southern Pacific Company to either of the said Southern Pacific railroads hereinbefore mentioned for rentals under the terms of existing leases in favor of the said Central Pacific Railroad Company, and now assigned to the Southern Pacific Company, shall never be included in or made part of any charge against the said Central Pacific Railroad Company or the earnings of its said railroads.

And the said Southern Pacific Company hereby agrees with the said Central Pacific Railroad Company that during the continuance of this lease it will annually, on the first Monday in May, pay to the said Central Pacific Railroad Company, as guaranteed rental for said Central Pacific Railroad and other leased property for the year ending on the thirty-first day of December next preceding that date, the sum of one million two hundred thousand dollars ($1,200,000).

And the said Southern Pacific Company hereby further in this behalf agrees with the said Central Pacific Railroad Company that if the earnings of the said Central Pacific Railroad, and of the railroads situated north of Goshen now held by the said Central Pacific Railroad Company under leases, shall in any year during the continuance of this agreement exceed all expenditures, payments, and disbursements of every kind made by the said Southern Pacific Company for such year, in operating, maintaining, adding to, and bettering the same, and of all expenditures, payments, and disbursements made by the said Southern Pacific Company for taxes, rentals, interest, and in discharge of any of the obligations by said Southern Pacific Company incurred under this agreement, as heretofore provided, including the said sum of one million two hundred thousand dollars, then such excess for any such year not exceeding the sum of two million four hundred thousand dollars shall, on the first Monday in May, as aforesaid, be paid to the said Central Pacific Railroad Company as additional rental for such year.

And it is further agreed between said Southern Pacific Company and the said Central Pacific Railroad Company that if at any time it appears that by the operation of this agreement either party is being benefitted at the expense of the other, then this agreement shall be revised and changed, so that such will not be the operation thereof, and if the parties hereto can not agree upon the changes necessary to that end, then each party shall appoint one arbitrator, disinterested, but skilled in relation to the subject matter, and the award and decision of such arbitrators, in writing, shall be binding upon the parties hereto, and this agreement shall be revised and changed in accordance with such award and decision, and, as revised and changed, shall be duly executed in writing by the parties hereto.

And it is further agreed that if the arbitrators so chosen can not agree upon an award and decision, then that the two shall choose a third impartial and skilled arbitrator, and that the award or decision of two of said three arbitrators shall have the same force and effect between the parties hereto, and shall be executed in like manner as hereinbefore provided for the award and decision of the two arbitrators first chosen.

And it is further agreed between the said Southern Pacific Company and the said Central Pacific Railroad Company that if any legislation or governmental action hereafter be had which, in the opinion of the said Southern Pacific Company, is in hostility to the said Central Pacific Railroad Company, its rights, or the property hereby leased, the said Southern Pacific Company may, on notice to the said Central Pacific Railroad Company, terminate this agreement, or may submit to arbitrators, in the manner and with the effect hereinbefore provided for, changes and revisions.

And it is further agreed between the Southern Pacific Company and the Central Pacific Railroad Company that, upon the execution of this agreement, the said Southern Pacific Company may enter upon, take possession of, and hold during the continuance of this agreement all the property, real and personal, hereby leased by the said Central Pacific Railroad Company to the said Southern Pacific Company, and that duplicate lists of all the rolling stock and other personal and movable property so leased, showing its condition at the time of the execution of this agreement, shall be made and certified by the secretary of each of said companies, and that one of said lists shall be kept by each of said companies.

And it is further agreed between the Southern Pacific Company and the Central Pacific Railroad Company that if at any time any of the rolling stock or other personal property hereby leased to the said Southern Pacific Company by said Central Pacific Railroad Company be used upon any roads other than the Central Pacific Railroad or the leased road north of Goshen, then the said Southern Pacific Company shall credit to the said Central Pacific Railroad Company the usual and customary sums paid by one railroad company to another for the use of the like property, and that the amounts so credited shall be deemed and taken to be a part of the earnings of said Central Pacific Railroad Company.

And it is further agreed that if, in the operation of said Central Pacific Railroad and leased roads north of Goshen, it becomes necessary to use any of the rolling stock or other personal property of the Southern

Pacific Company, not leased from the Central Pacific Railroad Company, upon the said Central Pacific Railroad or leased roads north of Goshen, that the usual and customary sums paid by one railroad company to another for the use of like property, shall be allowed as, and constitute a charge against, the receipts of the said Central Pacific Railroad and said leased lines, and be so considered in the accounting hereinbefore provided for.

In Testimony Whereof, the said Southern Pacific Company and the said Central Pacific Railroad Company have caused these presents to be signed by their respective presidents, countersigned by their secretaries, and their corporate seals to be hereunto affixed, pursuant to orders of their respective boards of directors, the day and year first herein written.

In duplicate.

(S. P. Co. Corporate Seal.) W. E. BROWN,
President Southern Pacific Co.

H. C. NASH,
Secretary Southern Pacific Co.

LELAND STANFORD,
President Central Pacific Railroad Co.

(C. P. R. R. Co. Corporate Seal.)
E. H. MILLER, JR.,
Secretary Central Pacific Railroad Co.

Exhibit No. 3

This Agreement, made and entered into this first day of January, 1888, by and between the Southern Pacific Company, a corporation duly organized and existing under the laws of the State of Kentucky, and the Central Pacific Railroad Company, a corporation duly formed and existing under the laws of the State of California and the United States:

Whereas heretofore and under date of February 17, 1885, an agreement of lease was made and executed by and between the parties hereto; and

Whereas since the date of the execution of such lease the lines of railroad of the Central Pacific Railroad Company have been extended from Delta, in the State of California, to the boundary line between the States of California and Oregon, forming at the last-mentioned point a connection with the line of railroad of the Oregon and California Railroad Company; and

Whereas since the execution of such lease, and in or about December, 1887, the said line of railroad to the boundary line between the States of California and Oregon, constituting part of the line from San Francisco, in California, to Portland, in Oregon, has been delivered by the Central Pacific Railroad Company to the Southern Pacific Company for operation, and the railroad properties operated by the Southern Pacific Company as lessee of the Central Pacific Railroad have been materially changed; and

Whereas by reason of the premises the Central Pacific Railroad Company has requested a modification of the terms and provisions of the agreement of lease above referred to;

Now, Therefore, This Agreement Witnesseth: That in consideration of the premises and of the sum of one dollar by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, the parties hereto have undertaken, covenanted, and agreed, and do hereby undertake, covenant, and agree to and with each other, as follows, that is to say:

That the said Southern Pacific Company, in lieu and stead of and substitution for the payment of rental by it to said Central Pacific Railroad Company as in said lease prescribed, shall pay to the said Central Pacific Railroad Company, on the first Monday in May, 1889, and on each first Monday of May thereafter during the continuance of said lease, as guaranteed rental for the year ending on December 31st next preceding that date, the sum of one million three hundred and sixty thousand dollars ($1,360,000) instead of the sum of one million two hundred thousand dollars ($1,200,000) which is in said original agreement prescribed, and is to be paid on the first day of May, 1888, in respect of the year ending December 31, 1887, and will pay to the Central Pacific Railroad Company on the first Monday of May in each year, as additional rental for the year terminating on December 31st, preceding, any excess up to but not beyond the sum of two million seven hundred and twenty thousand dollars of the earnings in such preceding year of the said Central Pacific Railroad above the expenditures, payments, and disbursements of every kind made by the Southern Pacific Company in operating, maintaining, adding to or bettering the same, or for taxes, rentals, interest, or in discharge of any of the obligations of said Southern Pacific Company incurred under said agreement of lease, or as the same is hereby modified, including the guaranteed rental above mentioned, and that the said agreement of lease shall be and is hereby modified accordingly.

In Witness Whereof the parties hereto have caused these presents to be signed by their respective second vice-presidents and countersigned by their respective secretaries, and their respective corporate seals to be hereunto affixed, pursuant to orders of their respective boards of directors, the day and year first above written.

(S. P. Co. Corporate Seal.)

CHAS. CROCKER,
Second Vice-President Southern Pacific Company.

G. L. LANSING,
Secretary Southern Pacific Company.

(C. P. R. R. Co. Corporate Seal.)

CHAS. CROCKER,
Second Vice-President Central Pacific Company.

E. H. MILLER, JR.,
Secretary Central Pacific Co.

Exhibit No. 4

SCHEDULE OF SALES OF GRANTED LANDS INCLUDING THOSE FULFILLED BY CONVEYANCES, AND THOSE YET OUTSTANDING ON UNCOMPLETED CONTRACTS.

Classification:

1. Designates sales not exceeding one quarter section, or 160 acres, to one person, at a price not exceeding $2.50 per acre.
2. Designates sales in excess of one quarter section, or 160 acres, to one person, but at a price not exceeding $2.50 per acre.
3. Designates sales not exceeding one quarter section, or 160 acres, to one person, but at a price exceeding $2.50 per acre.
4. Designates sales in excess of one quarter section, or 160 acres, to one person, at a price exceeding $2.50 per acre.
5. Designates acres sold as to which, owing to destruction of land department records, no information is at hand to show the price for which sold.

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EAST SIDE GRANT.

Sales Made		No. of			No. of	Contracts Outstanding	
Year	Class	Sales	Acres	Consideration	Sales	Acres	Consideration
1871	1	1	187.70	254.62			
	2	1	181.46	433.77			
*1871 to *1874	1	33	1,886.50	4,259.20			
	2	1	189.88	400.			
	3	39	1,311.63	5,468.71			
	4	5	2,936.51	10,732.08			
	5	7	256.68				
1874	1	22	2,040.28	4,005.68			
	2	2	385.45	610.20			
	3	10	621.61	2,127.05			
1875	1	59	4,839.39	9,355.57			
	2	7	1,823.91	3,049.98			
	3	34	1,936.79	7,674.19			
	4	1	360.	1,720.			
	5	1	22.65				

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East Side Grant—Continued

Sales Made		No. of			No. of	Contracts Outstanding	
Year	Class	Sales	Acres	Consideration	Sales	Acres	Consideration
1876	1	54	4,398.82	9,351.68			
	2	4	1,193.16	2,482.90			
	3	27	1,791.35	6,397.03			
*Sales made by European and Oregon Land Co., but contracts fulfilled subsequent to 1874 by Oregon and California R. R. Co.							
1876	5	1	40.				
1877	1	62	4,900.17	10,576.46			
	2	8	2,415.36	5,200.72			
	3	20	1,130.83	3,986.17			
	5	1	40.		1	40.	
1878	1	98	7,362.60	15,474.84			
	2	4	1,308.72	1,750.97			
	3	85	1,945.53	6,768.08			
1879	1	105	7,141.22	15,359.03			

EAST SIDE GRANT—Continued

Sales Made		No. of			No. of	Contracts Outstanding	
Year	Class	Sales	Acres	Consideration	Sales	Acres	Consideration
1879	2	5	991.25	2,139.54			
	3	42	2,139.49	7,249.33			
	4	1	292.21	761.67			
	5	1	1.				
1880	1	92	5,730.07	11,962.05			
	2	5	2,416.30	3,957.18			
	3	28	1,719.12	5,423.89			
1881	1	129	8,297.82	17,537.31			
	2	5	2,711.14	5,629.60			
1881	3	24	1,127.47	3,719.33			
	4	1	843.40	2,557.30			
1882	1	149	9,580.78	19,619.56			
	2	9	4,074.49	8,114.54			
	3	42	2,307.50	7,487.96			
	4	1	200.	580.			

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EAST SIDE GRANT—Continued

Sales Made						Contracts Outstanding	
Year	Class	No. of Sales	Acres	Consideration	No. of Sales	Acres	Consideration
1883	1	155	10,965.53	23,941.25			
	2	18	6,186.54	12,938.03			
	3	108	6,887.83	22,827.98			
	4	10	4,229.53	14,074.40			
	5	1	200.		1	200.	
1884	1	120	7,324.30	17,449.05			
	2	3	1,044.14	2,410.35			
	3	50	3,074.21	10,179.43			
	4						
	5	1	160.		1	160.	
1885	1	66	4,276.36	10,258.01			
	2	3	572.82	917.17			
1885	3	45	2,382.91	7,622.27			
	5	4	200.		4	200.	
1886	1	29	1,330.43	3,288.66			

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EAST SIDE GRANT—Continued

Sales Made		No. of			No. of	Contracts Outstanding	
Year	Class	Sales	Acres	Consideration	Sales	Acres	Consideration
1886	2	1	200.	270.			
	3	45	2,853.96	9,278.83			
	4	3	1,000.	3,130.			
	5	5	240.		5	240.	
1887	1	25	1,346.41	3,339.45	1	38.55	96.37
	2	1	260.	650			
	3	53	3,061.02	10,801.68	9	412.14	1,725.53
	4	2	442.30	1,399.05	1	242.30	848.05
	5	2	240.		2	240.	
1888	1	9	534.88	1,335.57			
	3	98	5,961.91	20,841.47	7	362.90	1,569.45
	5	1	80.		1	80.	
1889	1	5	323.40	803.10			
	3	144	7,764.27	35,539.28	31	1,813.91	7,552.96
	4	6	2,561.48	10,020.73	1	201.48	705.18

East Side Grant—Continued

Sales Made		No. of			No. of	Contracts Outstanding	
Year	Class	Sales	Acres	Consideration	Sales	Acres	Consideration
1889	5	4	160.24		4	160.24	
1890	1	6	405.70	1,014.25			
	3	169	10,394.97	48,612.57	46	2,985.20	14,005.40
	4	8	2,412.61	10,930.66	6	1,932.61	8,830.66
	5	9	661.57		9	661.57	
1891	1	8	486.15	1,210.38	2	160.00	400.
	3	169	10,189.10	51,052.54	68	3,924.83	22,026.43
	4	4	10,612.66	67,359.32			
	5	16	840.35		15	640.35	
1892	1	4	200.	495			
	3	129	6,871.63	29,779.86	51	2,870.15	12,657.49
	4	5	7,098.41	32,722.05			
	5	7	802.75		7	802.75	
1893	1	10	920.	2,300	1	80.	200.
	2	2	981.17	2,452.92	1	480.	1,200.

EAST SIDE GRANT—Continued

Sales Made		No. of			No. of	Contracts Outstanding	
Year	Class	Sales	Acres	Consideration	Sales	Acres	Consideration
1893	3	79	4,014.57	16,164.20	25	1,390.06	5,866.48
1894	1	7	822.98	807.45	4	199.50	498.75
	3	58	2,945.80	10,949.03	9	358.27	1,473.60
1894	4	2	600.	2,100.	2	600.	2,100.
	5	1	40.		1	40.	
1895	1	31	1,736.97	4,318.44	4	318.42	796.03
	2	1	170.	425.			
	3	74	3,386.79	13,775.30	11	435.32	1,918.95
	4	3	1,441.58	6,388.70			
1896	1	36	2,030.58	5,061.95	1	40.	100.
	2	2	836.20	2,085.37			
	3	78	3,584.75	13,237.55	10	450.37	1,710.53
	5	1	40.		1	40.	
1897	1	56	3,102.21	7,719.72	4	200.	500.
	2	2	452.67	1,131.67	1	252.67	631.67

EAST SIDE GRANT—Continued

Sales Made		No. of			No. of	Contracts Outstanding	
Year	Class	Sales	Acres	Consideration	Sales	Acres	Consideration
1897	3	63	2,943.92	10,939.75	13	749.61	2,628.49
	4	1	960.	6,240.			
1898	1	98	5,260.37	13,084.25	3	197.88	494.70
	2	7	2,582.85	6,457.12			
	3	85	4,342.60	16,421.38	7	291.58	1,177.54
	4	7	3,009.33	14.878.23			
1898	5	2	80.		2	80.	
1899	1	86	4,679.60	11,614.05	6	317.96	794.90
	2	2	877.60	2,164.30			
	3	126	6,761.59	26,145.88	7	303.73	1,061.83
	4	25	94,582.43	487,529.25			
	5	1	40.		1	40.	
1900	1	136	8,996.24	22,348.69	8	520.11	1,300.27
	2	16	21,658.96	53,840.51			
	3	189	10,549.11	42,676.71	13	600.	1,886.

EAST SIDE GRANT—Continued

Sales Made		No. of			No. of	Contracts Outstanding	
Year	Class	Sales	Acres	Consideration	Sales	Acres	Consideration
1900	4	39	129,197.82	789,556.99	1	4,966.50	22,139.80
	5	2	80.		1	40.	
1901	1	109	6,208.27	15,406.42	11	628.51	1,571.26
	2	7	5,310.21	13,275.52	1	2,360.	5,900.
	3	214	12,151.74	49,654.32	33	2,124.92	8,448.97
	4	42	72,716.74	601,254.24	4	21,176.13	198,987.46
	5	2	125.81		2	125.81	
1902	1	40	2,929.45	7,301.12	9	801.22	2,003.05
	2	3	920.	2,000.	2	680.	1,700.
1902	3	216	13,304.07	61,411.38	46	2,769.23	12,411.76
	4	51	65,858.51	545,029.55	14	17,115.76	143,495.04
1903	1	1	80.	200.	1	80.	200.
	2	1	320.	800.			
	3	24	1,560.02	7,204.59	1	80.	240.
	4	2	720.	2,680.			

EAST SIDE GRANT—Continued

Sales Made		No. of			No. of	Contracts Outstanding	
Year	Class	Sales	Acres	Consideration	Sales	Acres	Consideration
1903	5	1	40.		1	40.	
1905	3	1	40.	116.75			
1906	3	1	34.33	171.65			
	4	1	840.	46,622.			
1907	3	1	80.	3,270.			
	4	3	5,543.72	198,234.86			
1908	1	2	160.	400.			
	3	2	82.41	612.05			
1910	3	1	3.20	50.			
Total		4,780	733,597.18	3,839,179.44	535	78,842.54	493,855.60

EAST SIDE GRANT—Continued

Sales Made		No. of			No. of	Contracts Outstanding	
Year	Class	Sales	Acres	Consideration	Sales	Acres	Consideration
			SUMMARY, EAST SIDE GRANT.				
	1	1,843	119,985.13	271,452.81	55	3,582.15	8,955.33
	2	120	60,059.23	135,587.36	5	3,772.67	9,431.67
	3	2,523	141,208.03	575,638.19	387	21,922.22	98,362.41
	4	223	408,453.74	2,856,501.08	29	46,234.78	377,106.19
	5	71	3,891.05		59	3,330.72	
Total		4,780	733,597.18	3,839,179.44	535	78,842.54	493,855.60

WEST SIDE GRANT.

Sales Made		No. of			No. of	Contracts Outstanding	
Year	Class	Sales	Acres	Consideration	Sales	Acres	Consideration
1877	1	14	756.67	1,713.75			
	2	1	360.	620.			
1877	3	2	51.	190.			

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West Side Grant—Continued.

Sales Made		No. of			No. of	Contracts Outstanding	
Year	Class	Sales	Acres	Consideration	Sales	Acres	Consideration
1878	1	8	640.	1,460.			
1879	1	15	976.24	2,224.17			
	3	2	43.60	115.			
1880	1	10	964.60	1,980.35			
	2	1	320.	560.			
1881	1	28	2,030.37	4,513.48			
	2	2	598.03	1,495.07			
1882	1	7	408.11	1,020.28			
	2	2	360.	740.			
	3	5	268.10	884.30			
	4	1	760.	3,040.			
1883	1	14	920.	2,271.12			
	3	17	1,194.86	4,480.70			
	4	5	2,016.64	7,411.84			
1884	1	2	240.	600.			

West Side Grant—Continued.

Sales Made					Contracts Outstanding		
Year	Class	No. of Sales	Acres	Consideration	No. of Sales	Acres	Consideration
1884	3	13	804.68	2,727.94			
1885	2	1	320.	800.			
1885	3	8	640.	2,020.			
	5	2	161.77		2	161.77	
1886	1	1	42.06	105.15			
	3	4	240.	1,160.			
1887	3	12	640.	2,780.	2	200.	820.
1888	3	27	20,107.61	14,538.28	6	680.	4,680.
1889	3	24	1,739.88	10,036.95	7	520.	2,600.
	4	2	660.	2,400.	1	240.	1,120.
1890	3	7	360.	1,820.	3	120.	620.
	5	1	40.		1	40.	
1891	3	7	320.	3,240.	6	280.	3,000.
	5	1	40.		1	40.	
1892	1	1	40.	100.	1	40.	100.

WEST SIDE GRANT—Continued.

Sales Made		No. of			No. of	Contracts Outstanding	
Year	Class	Sales	Acres	Consideration	Sales	Acres	Consideration
1892	3	6	240.	960.			
1894	3	2	80.32	522.08	1	40.	260.
1895	3	3	200.	840.	1	80.	320.
	5	1	40.		1	40.	
1896	3	2	160.	600	1	120.	420.
1897	3	2	80.	380.			
1899	3	8	250.	1,668.50			
1900	3	9	280.	1,980.			
	4	2	480.	1,368.			
1901	1	3	400.	990.	1	160.	400.
	2	3	1,065.60	2,663.97			
	3	2	122.09	600.			
	4	3	45,036.49	316,846.98			
1902	3	3	250.86	1,008.10	1	80.	440.
	4	1	240.	1,200.			

West Side Grant—Continued.

Sales Made Year	Class	No. of Sales	Acres	Consideration	Contracts Outstanding No. of Sales	Acres	Consideration
1909	3	1	20.	400.			
1910	3	1	80.	1,800.			
Total		299	88,089.58	410,876.01	36	2,841.77	14,780.

Summary, West Side Grant.

Sales Made Year	Class	No. of Sales	Acres	Consideration	Contracts Outstanding No. of Sales	Acres	Consideration
	1	103	7,418.05	16,978.30	2	200.	500.
	2	10	3,023.63	6,879.04			
	3	167	28,173.	54,751.85	28	2,120.00	13,160.
	4	14	49,193.13	332,266.82	1	240.	1,120.
	5	5	281.77		5	281.77	
Total		299	88,089.58	410,876.01	36	2,841.77	$14,780.

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Exhibit No. 5

The Patented Lands Remaining Unsold in the East Side Grant, as of date April 30th, 1911, are in total, as to counties, as follows:

Washington	County........	2,452.18	acres
Multnomah	"	8,120.	"
Yamhill	"	27,029.50	"
Clackamas	"	89,764.41	"
Polk	"	37,015.47	"
Marion	"	30,307.16	"
Lincoln	"	15,906.	"
Benton	"	53,706.99	"
Linn	"	61,880.20	"
Lane	"	299,891.23	"
Douglas	"	617,554.94	"
Coos	"	106,563.36	"
Curry	"	7,844.64	"
Josephine	"	167,525.19	"
Jackson	"	441,951.15	"
Klamath	"	43,011.19	"
Tillamook	"	7,037.	"
Total East Side Grant......		2,017,560.61	acres

The following corrections shoud be made in the list of lands in Exhibit "K" to the Bill:

Yamhill County—Township 2 South, Range 5 West:

The 160 acres described in Section 1 should be eliminated from the list, the tract having been conveyed by deeds Nos. 295-E and 32-U, dated May 8, 1909, to Franklin Martin, in settlement of litigation instituted by Mr. Martin against Oregon and California Railroad Company prior to the institution of suit No. 3340.

There should be added to the tract described in Section 19 in the same township, the E½ of NE¼—80 acres, the same having been covered by contract No. 3271, which was canceled for default July 23, 1910.

In Township 3 *South, Range* 5 *West,* there should be added the NE¼ of SW¼ Sec. 7—40 acres, the same having been covered by contract No. 5858, which was canceled for default July 28th, 1910.

In Township 4 *South, Range* 5 *West,* the tract described as "S½ of S½ of SE¼ of SE¼ Sec. 31," 10.40 acres should be eliminated.

In Township 2 *South, Range* 6 *West,* the E½ of NE¼ and SW¼ Sec. 33, are correctly listed as East Side grant lands. They are situated within the indemnity limits of the East Side grant, and also within the primary limits of the West Side grant, and were erroneously patented as West Side lands.

In Township 4 *South, Range* 6 *West,* there should be eliminated from the list the SW¼ of SE¼ Sec 17—40 acres. This tract was condemned by the City of Sheridan for water supply purposes, pursuant to proceedings instituted prior to the institution of suit No. 3340, and payment was made by the city and accepted by the railroad company for the tract on October 12, 1908.

In the same township, the tract described in Sec. 31, the acreage is overstated—it should be 415.48; therefore 0.30 acre should be deducted.

To the total acres for Yamhill County should be added, in consequence of the foregoing corrections, 120 acres, and there should be deducted 210.70, making the true total of acres 27,029.50.

Clackamas County—Township 4 *South, Range* 1 *East*:

There should be added the NW¼ of NE¼ Sec 13—40 acres; the same having been covered by contract No. 3319, which was canceled for default July 30, 1910.

Township 6, *Range* 2—The acreage for the tract in Sec. 5 is overstated—it should be 522.55 acres; therefore 30 acres should be deducted.

Same township—There should be added the S½ of NE¼ Sec. 17—80 acres; the tract having been covered by contracts Nos. 3345 and 3385, which were canceled for default July 28th, 1910.

Township 4, *Range* 3—There should be added the N½ of NW¼ Sec. 33—80 acres; the same having been covered by contract No. 3530, which was canceled for default June 29th, 1909.

Township 5, *Range* 3—There should be added the NE¼ of NW¼ Sec. 11—40 acres; the same having been covered by contract No. 3198, which was canceled for default July 30th, 1910.

Same township—There should be added Lot 1 in Sec. 31—58.82 acres; the same having been covered by contract No. 2907, which was canceled for default July 30, 1910.

Township 6, *Range* 3—There should be added the NE¼ of NE¼ Sec. 7—40 acres; the same having been covered by contract No. 5761, which was canceled for default July 28, 1910.

Same township—There should be added the E½ of NE¼ Sec. 19—80 acres; the same having been covered by contract No. 5761, which was canceled for default July 28, 1910.

Township 3, *Range* 4—There should be added the E½ of SE¼ Sec. 27—80 acres; the same having been covered by contract No. 3128, which was canceled for default July 3, 1909.

Township 4, *Range* 4—There should be added the SE¼ of SE¼ and Lot 9 of Sec. 9—59.02 acres; the same having been covered by contract No. 3591, which was canceled for default June 29th, 1909.

Same township—There should be added the SW¼ of NE¼ and NW¼ of SE¼ Sec. 29—80 acres; the same having been covered by contract No. 3528, which was canceled for default June 8, 1910.

In consequence of these changes, there should be added to the total acreage of Clackamas County, as stated in the exhibit, 632.34 acres, and there should be deducted 80 acres, making the true total for the county 89,764.41 acres.

Polk County—Township 7 *South, Range* 6 *West*:

The acreage for the tracts in Section 9 should read 316.70, a deduction of 1.30 acres.

In Township 8 *South, Range* 8 *West*, the acreage for the tracts in Section 1 should read 477.98 acres, a deduction of 1.02 acres.

In consequence of these changes, there should be deducted from the total acres as stated in Polk County, 2.32 acres, making the true total for the county 37,015.47 acres.

Marion County—Township 8 *South, Range* 4 *West*:

Lot 9, in Sec. 1—7 acres, has been lost by the railroad company by adverse possession, and should therefore be eliminated from the list of unsold lands.

Township 8 *South, Range* 1 *East*—There should be added the NE¼ of SE¼ Lots 7 and 8, Sec. 9—58.16 acres; the same having been covered by contract No. 3674, which was canceled for default July 30th, 1910.

Township 8 *South, Range* 4 *East*—The description "S½ Section 29" should be changed to read "SW¼; N½ of SE¼; SW¼ of SE¼, and Lot 1, Section 29."

In consequence of these changes, there should be added to the total acres in Marion County 58.16 acres, and there should be deducted 7 acres, making the true total for the county, 30,307.16 acres.

Benton County—Township 13 *South, Range* 7 *West*:

There should be added the N½ of SW¼ Sec. 21—80 acres; the same having been covered by contract No.

4853, which was canceled for default October 13, 1908. This increases the total acreage of Benton County to 53,706.99 acres.

Linn County—Township 9 *South, Range* 1 *East*:

There should be added the SE¼ of SW¼ Sec 23—40 acres; the same having been covered by contract No. 5502, which was canceled for default July 28th, 1910.

Township 15, *Range* 2—The description of part of Sec. 19 should be amended to read as follows:

> "That part in Linn County, of Lot 3, and of SW¼ of SE¼ Sec. 19—19 acres," the remainder of the tract—137 acres—being in Lane County.

Township 15 *South, Range* 1 *West*—The acreage of Sec. 1 should read 586.85 acres, a reduction of 14.15 acres.

Same township—The portion of Sec. 9 should be amended to read: "All that part situated in Linn County, Sec. 9—377.50 acres," an increase of 57.50 acres.

Same township—The portion of Sec. 7 should be amended to read: "All that part situated in Linn County, containing 102.62 acres, a deduction of 57.38 acres.

Same township—The description of part of Sec. 11 should be amended to read: "NW¼ of NW¼ Sec. 11—40 acres," an increase of 25 acres.

By reason of these changes there should be added to the printed total of acres in Linn County, 122.50 acres, and there should be deducted 208.53 acres, making the true total for the county 61,880.20 acres.

Lane County—Following the description of lands in *Township* 22 *South, Range* 1 East, there should be inserted the following:

Township 15 *South, Range* 2 *East*:

"Lot 4, SE¼ of SW¼, part of Lot 3, and part of SW¼ of SE¼, in Lane County, Section 19—137 acres."

Township 15 *South, Range* 1 *West*:

The acres in Sec. 1 should read 53.99, an increase of 13.99 acres.

Same township—The acreage in Sec. 7 should read 553.94 acres, an increase of 56.94 acres.

Same township—The description of land in Sec. 9 should read: "Part of E½ in Lane County, Sec. 9—182.50 acres," a decrease of 57.50 acres.

Same township—The description of land in Sec. 11 should be amended to read SW¼ Sec 11—160 acres, a decrease of 25 acres.

Township 21 *South, Range* 2 *West*:

There should be added the NE¼ of NE¼ Sec. 31—40 acres; the same having been covered by contract No. 6317, which was canceled for default July 29, 1909.

Township 21 *South, Range* 3 *West*:

There should be added the SE¼ of SW¼ Sec. 13—40 acres; the same having been covered by contract No. 6667, which was canceled for default July 28th, 1910.

Township 20 *South, Range* 4 *West*:

There should be added the NW$\frac{1}{4}$ of SE$\frac{1}{4}$ Sec. 27—40 acres; the same having been covered by contract No. 6596, which was canceled for default July 28th, 1910.

Township 21 *South, Range* 4 *West*:

The acreage of the tract in Sec. 3 should read 404.80, an increase of 39.80 acres.

Township 16 *South, Range* 5 *West,* Section 9, add "Lot 3."

Township 19 *South, Range* 5 *West,* Section 9, add "Lot 1."

In consequence of these changes, there should be added to the total acreage in Lane County 367.73 acres, and there should be deducted 82.50 acres, making the true total for the county 299,891.23 acres.

Douglas County—Township 30 *South, Range* 1 *West*:

The description "All Section 1" should be changed to read, "All (except Lots 1, 2, 3, 4,) Section 1."

There should be eliminated from the description of land in Sec. 9, the N$\frac{1}{2}$ of NE$\frac{1}{4}$ and the N$\frac{1}{2}$ of SW$\frac{1}{4}$—160 acres; the same being unpatented unselected indemnity land, in Forest Reserve, and therefore not at present subject to selection by the railroad company.

The description "All Section 13 should be changed to read, "All (except Lots 1, 2, 3, 4,) Section 13."

Township 31 *South, Range* 2 *West*—There should be added the SW$\frac{1}{4}$ of Section 3, 160 acres; the SE$\frac{1}{4}$

and N½ of Section 9, 480 acres; the NE¼ of NW¼ of Section 15, 40 acres; the SE¼ of SE¼ of Section 21, 40 acres.

Township 29, *Range* 3—There should be added the NW¼ of NE¼ Sec. 21—40 acres; the same having been covered by contract No. 6416, which was canceled for default July 28th, 1910.

Township 26, *Range* 4—The acreage of Lot 5 in Sec. 7 should read 42.57 acres, a decrease of 4.26 acres.

Township 29, *Range* 4—There should be added Lot 1 in Sec. 5—39.04 acres; the same having been covered by contract No. 6007, which was canceled for default July 28, 1910.

Township 22, *Range* 5—The description "S½ of N½ Section 27" should be changed to read "S½ of NE¼; SE¼ of NW¼; Lot 2, Section 27."

Township 28, *Range* 5—There should be added the SE¼ of NW¼ Sec. 25—40 acres; the same having been covered by contract No. 4765, which was canceled for default August 2nd, 1910.

Township 20, *Range* 9—The acreage of tracts in Sec. 1 should read 714.47 acres, a decrease of 3 acres.

Township 21, *Range* 6—The description "W½ Sec. 25" should be changed to read "NW¼; NE¼ of SW¼; W½ of SW¼; Lot 3; Section 25."

Same township—There should be added the SE¼ of NE¼ Sec. 11—40 acres; the same having been covered by contract No. 4439, which was canceled for default July 30, 1910.

There should be added 0.02 acre on account of error in footing in the exhibit.

Township 22, *Range* 10—The description "NW¼ of SW¼ Section 15" should be changed to read "Lot 16, Section 15."

By reason of these changes there should be added to the acreage of Douglas County 879.06 acres, and there should be deducted 167.26 acres, making the true total for the county 617,554.94 acres.

Josephine County—Township 36 *South, Range* 5 *West*:

There shoud be added the SW¼ of NW¼ Sec. 31 —44.23 acres; the same having been covered by contract 5825, which was canceled for default July 28, 1910.

There should be deducted on account of error in footing in the exhibit, 0.02 acre.

These changes make the true total of the county 167,525.19 acres.

Jackson County—Township 41 *South, Range* 2 *East*:

The description "N½ of N½, Section 13" should be changed to read "Lots 1, 2, 3, 4, Section 13". The description "N½ Section 15" should be changed to read "N½ of N½; Lots 1, 2, 3, 4, Section 15". The description "N½ Section 17" should be changed to read "N½ of N½; Lots 1, 2, 3, 4, Section 17."

Jackson County—Township 36 *South, Range* 3 *East.*

There should be added the NW¼ of SW¼ Sec 35 —40 acres; the same having been covered by contract

No. 6224, which was canceled for default July 28th, 1910.

Township 34 *South, Range* 1 *West*—All of Sec. 33 should read: "All Sec. 35."

Township 39 *South, Range* 2 *West*—There should be added the SW¼ of NE¼ Sec. 5—40 acres; the same having been covered by contract No. 6103, which was canceled for default July 28th, 1910.

Township 37 *South, Range* 3 *West.*—The description "SW¼ Section 1" should be changed to read "NE¼ of SW¼; S½ of SW¼; Lot 5; of Section 1."

Township 40 *South, Range* 4 *West.*—There should be added the SE¼ of SE¼ Sec. 17—40 acres; the same having been covered by contract No. 4913, which was canceled for default July 29th, 1910.

Same township—There should be added the NW¼ of SE¼ Sec. 21—40 acres; which was also covered by contract No. 4913, canceled for default July 29th, 1910.

In consequence of these changes, the total acreage of Jackson County should be increased by 160 acres, making the true total 441,951.15 acres.

Klamath County—The acreage of the tracts in Sec. 1, *Township* 40 *South, Range* 6 *East,* should read 381.19 acres, a decrease of 3.81 acres. This makes the total acres in the county 43,011.19 acres.

Tillamook County—There are certain tracts listed in Exhibit "K" as being patented unsold lands in the West Side grant in Tillamook County, which should in fact be listed as being East Side grant lands. Certain of these lands are in the East Side indemnity limits, and were patented, and rightly so as East Side grant lands. Such lands are marked "A" in the following list; other lands are in the East Side indemnity limits, and were patented erroneously as West Side grant lands. Such lands are marked "B" in the following list:

"A"	SE 1/4 Sec. 7, T. 3 S., R. 6 W	160 acres
"A"	All Sec. 19, T. 3 S., R. 6 W	666 acres
"A"	All Sec. 31, T. 3 S., R. 6 W	665 acres
"A"	All Sec. 7, T. 4 S., R. 6 W	662 acres
"B"	SE 1/4 Sec. 13, T. 3 S., R 7 W	160 acres
"B"	SE 1/4 Sec. 23, T. 3 S., R. 7 W	160 acres
"B"	All Sec. 25, T. 3 S., R. 7 W	640 acres
"B"	All Sec. 35, T. 3 S., R. 7 W	640 acres
"A"	All Sec. 1, T. 4 S., R. 7 W	642 acres
"A"	NE 1/4 and S 1/2 Sec. 3, T. 4 S., R. 7 W	482 acres
"A"	E 1/2 of E 1/2, SW 1/4 of SE 1/4, S 1/2 of SW 1/4 Sec. 9, T. 4 S., R. 7 W	280 acres
"A"	All Sec. 11, T. 4 S., R. 7 W	640 acres
"A"	N 1/2 of N 1/2 Sec. 13, T. 4 S., R. 7 W	160 acres
"A"	N 1/2, N 1/2 of SW 1/4, SE 1/4 of SW 1/4 and SE 1/4 Sec. 15, T. 4 S., R. 7 W	600 acres
	Total	7,037 acres

These various changes make the true total of patented unsold lands in the East Side grant 2,017,560.61 acres.

WEST SIDE GRANT

Act of May 4th, 1870.

Following is a correct statement of the patented unsold lands of the West Side grant:

Clarke County, Washington....	212.50 acres
Columbia County, Oregon	17,678.83 acres
Tillamook County, Oregon.....	22,704. acres
Washington County, Oregon....	15,680. acres
Multnomah County, Oregon....	927. acres
Yamhill County, Oregon.......	1,563.11 acres
Total West Side grant......	58,765.44 acres

The following changes should be made in the schedule of lands in "Exhibit K" to the Bill:

Clarke County—Township 3 North, Range 1 East.

There should be eliminated the N½ of SE¼ Sec. 33—80 acres; the same having been conveyed by deed No. 412-E, dated July 7th, 1910, in settlement of the Roy W. Minkler suit, which was instituted prior to the institution of suit No. 3340. Deducting the 80 acres in this tract from the printed total, leaves a true total for the county of 212.50 acres.

Tillamook County—Township 3 South, Range 6 West:

The N½ and SW¼ Sec. 7—507 acres, is properly a part of the West Side grant, but was patented erroneously as being East Side lands.

Same township—The SE¼ Sec. 7—160 acres,

should be eliminated as it is East Side land and so patented.

Same township—All Sec. 19—666 acres, and all Sec. 31—665 acres, should be eliminated as they are East Side lands and so patented.

Township 4, *Range* 6—All Sec. 7—662 acres, should be eliminated as it is East Side land and so patented.

Township 3, *Range* 7—SE¼ Sec. 13—160 acres, should be eliminated as it is East Side land, but erroneously patented as West Side land.

Same township—SE¼ Sec. 23—160 acres; all Sec. 25—640 acres and all Sec. 35—640 acres, should be eliminated for the same reason.

Township 4 South, Range 7 West:

	Acres
All Sec. 1	642
NE ¼ and S ½ Sec. 3	482
E ½ of E ½, SW ¼ of SE ¼ and S ½ of SW ¼ Sec. 9	280
All Sec. 11	640
All Sec. 13	640
N ½, N ½ of S W¼, SE ¼ of SW ¼ and SE ¼ Sec. 15	600

These lands should be eliminated because they are East Side lands and so patented.

In consequence of the elimination of these lands, aggregating 7,037 acres, the true total of patented unsold West Side lands in Tillamook County is 22,704 acres.

Washington County—Township 2 *North, Range* 3 *West*:

There should be added the SE¼ of SW¼ and SW¼ of SE¼ Sec. 3—80 acres; the same having been covered by contract W.S.—421, which was canceled for default July 23rd, 1910.

Same township—There should be added the SE¼ of SE¼ Sec. 7—40 acres; the same having been covered by contract W.S.—521 which was canceled for default July 23rd, 1910.

Same township—There should be added the NW¼ of SW¼ and NE¼ of SE¼ Sec. 11—80 acres; the same having been covered by contracts W.S.—509 and W.S.—385, which were canceled for default, July 30th, 1910.

Township 1 *South, Range* 5 *West*—All of the lands in this township (except N½ of NW¼ Sec. 15) are West Side grant lands and not within the East Side grant limits, but they were erroneously patented as East Side grant lands.

The note at the bottom of page 348 is in error in stating that the lands therein referred to have not been patented.

As herein shown, 200 acres are added to the Washington County list, making the true total for that county 15,680 acres.

Yamhill County—Township 3 *South, Range* 6 *West*:

The N½ Sec. 5 is in fact West Side grant land, and not within the East Side grant limits, but was erroneously patented as East Side grant lands.

By reason of these changes the true total of unsold West Side patented land is 58,765.44 acres.

Exhibit No. 6

SCHEDULE OF UNPATENTED LANDS REMAINING UNSOLD APRIL 30, 1911.

Described by Governmental Subdivision, Tabulated by Counties, and showing whether Surveyed Primary Lands, or Unsurveyed Primary Lands, or Selected Indemnity Lands, and separately stated as to East Side and West Side land grants.

Governmental Subdivisions and Sections are designated by abbreviations "N," "S," "E," "W," "NE," "NW," "SE" and "SW," meaning, respectively, North, South, East, West, Northeast, Northwest, Southeast and Southwest.

EAST SIDE GRANT.

Act of July 25, 1866.

County	Primary Surveyed	Primary Unsurveyed	Indemnity Selected
Clackamas	5.24	12.	
Coos	14,483.43	8,120.	80.00
Benton	41.52	18.	
Curry	4,080.00	16,160.	5.00 est.
Marion	16.49	112.	
Polk		75.	
Yamhill	22.95	10.	

EAST SIDE GRANT—Continued.

County	Primary Surveyed	Primary Unsurveyed	Indemnity Selected
Linn	26.77	35.	200.73
Lane	127.22	120.	40.00
Klamath		5,400.	
Josephine	7,814.35	127,345.	679.04
Douglas	14,351.68	49,880.	
Jackson	4,324.68	31,000.	160.00

Primary-Surveyed	45,294.33
Primary-Unsurveyed	238,287.00
Indemnity-Selected	1,164.77
Total	284,746.10

CLACKMAS COUNTY.

Township 2 South, Range 2 East, W. M.

Part of Section	Sec.	Acres
Unpatented Primary.		
Lot 7,	9	.11
Lot 7,	31	3.44
Township 2 South, Range 3 East, W. M.		
Lot 7,	25	1.39
Lot 8,	25	.30
Total acres,		5.24

Unsurveyed Primary.

Township 2 South, Range 2 East, W. M.

Island,	15	12.
Total acres,		12.

COOS COUNTY.

Township 29 *South, Range* 9 *West, W. M.*

Part of Section	Sec.	Acres
Unpatented Primary.		
All,	17	638.64
All,	19	674.
All,	21	640.
All,	29	640.
All,	31	674.02
All,	33	640.

Township 31 *South, Range* 10 *West, W. M.*

N ½ of NE ¼, W ½ of NW ¼, NW ¼ of SW ¼, SW ¼ of SE ¼,	25	240.
W ½ of SW ¼, SE ¼ of SW ¼, SE ¼,	35	280.

Township 32 *South, Range* 10 *West, W. M.*

All,	1	630.
Lots 2, 3 and 4, S ½ of NW ¼, N ½ of SW ¼, SE ¼ of SW ¼ and SE ¼,	3	475.28
S ½ of NE ¼, Lot 4, S ½ of N W¼, N ½ of S ½, SE ¼ of SW ¼, SE ¼ of SE ¼,	5	439.21
NE ¼ of NE ¼, S ½ of NE ¼, Lot 3 and 4	7	188.87
N ½ of NE ¼, W ½,	9	400.
All,	11	640.
N ½, SW ¼, N ½ of SE ¼, SW ¼ of SE ¼,	15	600.
All,	17	640.

EAST SIDE GRANT—Coos County—Continued.

Part of Section	Sec.	Acres
Township 32 South, Range 10 West, W. M.		
All,	19	621.
N ½, SW ¼, N ½ of S E¼, SW ¼ of SE ¼	21	600.
N ½ and SW ¼,	29	480.
All,	31	622.64
Township 32 South, Range 11 West, W. M.		
Lots 1, 2, 3 and 10, SW ¼ and NW ¼ of SE ¼,	1	326.25
Lots 1, 7, 8, 9, 10, 11, 15, 16, NE ¼ of SW ¼ and SE ¼,	3	513.52
SE ¼ of NE ¼, NW ¼ of NW ¼, NE ¼ of SE ¼, SW ¼ of SE ¼,	11	160.
All,	13	640.
NE ¼, NE ¼ of NW ¼, S ½ of NW ¼, NE ¼ of SW ¼ and SE ¼,	15	480.
SE ¼ of SE ¼,	21	40.
E ½ of NE ¼, NW ¼, W ½ of SW ¼, S ½ of SE ¼,	23	400.
NE ¼, N ½ of NW ¼, SW ¼ of NW ¼, W ½ of SW ¼, NW ¼ of SE ¼,	25	400.
NE ¼,	27	160.
NW ¼ of NE ¼, S ½ of NE ¼, NW ¼, S ½,	35	600.
Total acres,		14,483.43

EAST SIDE GRANT—Coos County—Continued.

Part of Section	Sec.	Acres
Unsurveyed Primary		
Township 27 *South, Range* 9 *West, W. M.*		
S ½,	7	320.
Township 29 *South, Range* 10 *West, W. M.*		
S ½,	23	320.
NW ¼ and S ½,	25	480.
E ½,	27	320.
N ½ and SE ¼,	35	480.
Township 30 *South, Range* 11 *West, W. M.*		
Unsurveyed Primary.		
NE ¼, S ½ of SW ¼, SE ¼,	1	400.
SE ¼,	11	160.
All,	13	640.
All,	23	640.
All,	25	640.
All,	35	640.
Township 31 *South, Range* 11 *West, W. M.*		
NW ¼ of NE ¼, W ½ of SW ¼,	33	120.
Township 33 *South, Range* 11 *West, W. M.*		
N ½, SW ¼,	1	480.
NW ¼ of NE ¼, S ½ of NE ¼, NW ¼, SE ¼,	3	440.

EAST SIDE GRANT—Coos County—Continued.

Township 33 *South, Range* 11 *West, W. M.*

Part of Section	Sec.	Acres
N ½, SW ¼, N½ of SE ¼, SW ¼ of SE ¼,	11	600.
All,	13	640.
NE ¼, N ½ of SE ¼,	23	240.
N ½, N ½ of SW ¼, SE ¼,	25	560.
Total acres,		8,120.

Indemnity Selected

Township 29 *South, Range* 12 *West, W. M.*

SE ¼ of NE ¼, NE ¼ of SE ¼,	27	80.
Total acres.		80.

BENTON COUNTY.

Township 10 *South, Range* 4 *West, W. M.*

Unpatented Primary

Lot 5,	11	1.52

Township 10 *South, Range* 5 *West, W. M.*

S ½ of N ½ of NE ¼,	35	40.
Total acres,		41.52

Unsurveyed Primary

Township 12 *South, Range* 4 *West, W. M.*

Island,	31	3.

Township 14 *South, Range* 5 *West, W. M.*

Island,	25	15.
Total acres,		18.

EAST SIDE GRANT—Continued.

CURRY COUNTY.

Township 32 *South, Range* 10 *West, W. M.*

Part of Section	Sec.	Acres
Unpatented Primary		
All,	13	640.
SE ¼ of SE ¼,	15	40.
SE ¼ of SE ¼,	21	40.
All,	23	640.
All,	25	640.
All,	27	640.
SE ¼,	29	160.
All,	33	640.
All,	35	640.
Total acres,		4,080.

Unsurveyed Primary

Township 33 *South, Range* 10 *West, W. M.*

All,	1	640.
All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
All,	11	640.
All,	13	640.
All,	15	640.
All,	17	640.
All,	19	640.

EAST SIDE GRANT—Curry County—Continued

Township 33 *South, Range* 10 *West, W. M.*

Part of Section	Sec.	Acres
All,	21	640.
All,	23	640.
All,	25	640.
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.
All,	35	640.

Township 34 *South, Range* 10 *West, W. M.*

Part of Section	Sec.	Acres
All,	1	640.
All,	3	640.
All,	5	640.
All,	9	640.
All,	11	640.
All,	15	640.
NE ¼,	17	160.
E ½ and N ½ of NW ¼,	21	400.

Township 33 *South, Range* 11 *West, W. M.*

Part of Section	Sec.	Acres
SE ¼,	1	160.
NE ¼ of NE ¼,	3	40.
SE ¼ of SE ¼,	11	40.
Total acres,		16,160.

EAST SIDE GRANT—Curry County—Continued.

Part of Section	Sec.	Acres
Selected Indemnity		
Township 35 *South, Range* 11 *West, W. M.*		
That part of Lot 6 in SW ¼ of SE ¼,	29	3 est.
That part of Lot 8 in SW ¼ of NW ¼,	29	2 est.
Total acres,		5 est.

MARION COUNTY.

Part of Section	Sec.	Acres
Township 5 *South, Range* 1 *West, W. M.*		
Unpatented Primary		
Lot 3,	21	16.49
Total acres,		16.49
Unsurveyed Primary		
Township 6 *South, Range* 3 *West, W. M.*		
Island,	21	50.
Township 8 *South, Range* 4 *West, W. M.*		
Part E. of River,	33	2.
Lots in S ½ of SE ¼ (Island in Willamette River),	35	60.
Total acres,		112.

EAST SIDE GRANT—Continued.

POLK COUNTY.

Township 9 *South, Range* 4 *West, W. M.*

Unsurveyed Primary.

Part of Section	Sec.	Acres
Island,	23	75.
Total acres,		75.

YAMHILL COUNTY.

Township 3 *South, Range* 3 *West, W. M.*

Unpatented Primary.

Part of Section	Sec.	Acres
Lot 6,	35	1.60
Township 5 *South, Range* 3 *West, W. M.*		
Lot 13,	15	1.70
Township 5 *South, Range* 5 *West, W. M.*		
Lot 3,	13	.05
Township 6 *South, Range* 5 *West, W. M.*		
Lot 9,	3	19.60
Total acres,		22.95

Unsurveyed Primary.

Township 4 *South, Range* 3 *West, W. M.*

Part of Section	Sec.	Acres
Island,	15	10.
Total acres,		10.

LINN COUNTY.

Township 12 *South, Range* 1 *West, W. M.*

Unpatented Primary.

Part of Section	Sec.	Acres
Lot 11,	33	22.85

EAST SIDE GRANT—Linn County—Continued.

Township 13 *South, Range* 4 *West, W. M.*

Part of Section	Sec.	Acres
Lot 1,	17	3.48
Township 15 *South, Range* 4 *West, W. M.*		
Lot 1,	5	.44
Total acres,		26.77
Unsurveyed Primary.		
Township 10 *South, Range* 2 *West.*		
Islands,	9	30.
Township 11 *South, Range* 4 *West, W. M*.		
Unsurveyed Primary.		
Part of Island outside of D. L. C.,	29	5.
Total acres,		35.
Selected Indemnity.		
Township 11 *South, Range* 3 *East, W. M.*		
N ½ of SW ¼ and Lots 2, 3 and 4,	35	200.73
Total acres,		200.73
LANE COUNTY.		
Township 17 *South, Range* 1 *West, W. M.*		
Unpatented Primary.		
Lot 6,	23	3.70
Township 18 *South, Range* 1 *West.*		
NE ¼ of SW ¼,	7	40.

EAST SIDE GRANT—Lane County—Continued.

Township 16 *South—Range* 2 *West, W. M.*

Part of Section	Sec.	Acres
Lot 9,	25	.03

Township 20 *South—Range* 3 *West, W. M.*

Lot 2,	11	3.49

Township 22 *South, Range* 3 *West, W. M.*

S ½ of SW ¼,	5	80.
Total acres,		127.22

Unsurveyed Primary.

Township 22 *South, Range* 1 *East, W. M.*

W ½ of NW ¼, NW ¼ of SW ¼,	31	120.
Total acres,		120.

Indemnity Selected.

Township 17 *South, Range* 3 *East, W. M.*

SE ¼ of NE ¼,	9	40.
Total acres,		40.

KLAMATH COUNTY.

Township 38 *South, Range* 5 *East, W. M.*

Unsurveyed Primary.

SW ¼ of NE ¼, NW ¼ of NW ¼, S ½ of NW ¼, SW ¼, W ½ of SE ¼,	5	400.
All,	7	640.
All,	17	640.
All,	19	640.

EAST SIDE GRANT—Klamath County—Continued

Township 38 *South, Range* 5 *East, W. M.*

Part of Section	Sec.	Acres
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.
W ½ of NE ¼, W ½, NW ¼ of SE ¼, S ½ of SE ¼,	35	520.
Total acres,		5,400.

JOSEPHINE COUNTY.

Township 34 *South, Range* 5 *West, W. M.*

Unpatented Primary.

All,	1	645.40
All,	11	646.46
All,	15	640.
W ½,	23	320.
All,	27	640.

Township 36 *South, Range* 5 *West, W. M.*

All,	25	647.80
All,	27	609.93
All,	35	649.

Township 34 *South, Range* 6 *West, W. M.*

NW ¼ of NE ¼, NE ¼ of SE ¼, Lots 3 and 4,	35	146.46

EAST SIDE GRANT—Josephine County—Continued

Township 39 South, Range 6 West, W. M.

Part of Section	Sec.	Acres
SE ¼ of NE ¼, SE ¼ of SE ¼,	5	80.
SE ¼ of NW ¼, NE ¼ of SW ¼, NE ¼ of SE ¼, Lots 1, 2 and 3,	7	302.85

Township 33 South, Range 7 West, W. M.

Unpatented Primary.

S ½,	7	321.31
S ½,	9	320.
All,	17	640.
All,	19	642.84

Township 37 South, Range 7 West, W. M.

E ½ of SE ¼,	11	80.
NW ¼ of NE ¼, W ½, SW ¼ of SE ¼, Lots 1 and 4,	25	482.30
Total acres,		7,814.35

Township 37 South, Range 5 West, W. M.

Unsurveyed Primary.

All,	3	640.
All,	11	640.

Township 38 South, Range 5 West, W. M.

All,	5	640.
All,	7	640.
All,	17	640.
All,	19	640.

Unsurveyed Primary.

Township 37 *South, Range* 6 *West, W. M.*

Part of Section	Sec.	Acres
NW ¼,	19	160.
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.

Township 35 *South, Range* 7 *West, W. M.*

3 Islands,	35	25.

Township 36 *South, Range* 7 *West, W. M.*

All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
All,	17	640.
All,	19	640.
All,	21	640.
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.
NW ¼ of NE ¼, S ½ of NE ¼, NW ¼, S ½,	35	600.

EAST SIDE GRANT—Josephine County—Continued

Township 38 *South, Range* 7 *West, W. M.*

Part of Section.	Sec.	Acres
All,	1	640.
All,	23	640.
All,	25	640.
N ½, SE ¼,	29	480.
All,	33	640.
All,	35	640.

Unsurveyed Primary.

Township 39 *South, Range* 7 *West, W. M.*

Part of Section.	Sec.	Acres
All,	1	640.
All,	3	640.
All,	5	640.
N ½, E ½ of SW ¼, SE ¼,	9	560.
All,	11	640.
All,	13	640.
NE ¼, E ½ of NW ¼,	15	240.

Township 33 *South, Range* 8 *West, W. M.*

Part of Section.	Sec.	Acres
NW ¼, S ½,	5	480.
All,	7	640.
All,	9	640.
All,	11	640.
All,	13	640.

Unsurveyed Primary.

Township 33 *South—Range* 8 *West, W. M.*

Part of Section.	Sec.	Acres
All,	15	640.
All,	17	640.

EAST SIDE GRANT—Josephine County—Continued

Township 33 *South, Range* 8 *West, W. M.*

Part of Section.	Sec.	Acres
All,	19	640.
All,	21	640.
All,	23	640.
All,	25	640.
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.
All,	35	640.

Unsurveyed Primary.

Township 34 *South, Range* 8 *West, W. M.*

Part of Section.	Sec.	Acres
All,	1	640.
All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
All,	11	640.
All,	13	640.
All,	15	640.
All,	17	640.
All,	19	640.
All,	21	640.
All,	23	640.
All,	25	640.

Township 34 *South, Range* 8 *West, W. M.*

Part of Section.	Sec.	Acres
All,	27	640.

EAST SIDE GRANT—Josephine County—Continued

Township 34 *South, Range* 8 *West, W. M.*

Part of Section.	Sec.	Acres
All,	**29**	**640.**
All,	**31**	**640.**
All,	**33**	**640.**
All,	**35**	**640.**

Township 35 *South, Range* 8 *West, W. M.*

All,	**1**	**640.**
All,	**3**	**640.**

Unsurveyed Primary

Township 35 *South, Range* 8 *West, W. M.*

All,	**5**	**640.**
All,	**7**	**640.**
All,	**9**	**640.**
All,	**11**	**640.**
All,	**13**	**640.**
All,	**15**	**640.**
All,	**17**	**640.**
All,	**19**	**640.**
All,	**21**	**640.**
All,	**23**	**640.**
All,	**25**	**640.**
All,	**27**	**640.**
All,	**29**	**640.**
All,	**31**	**640.**
All,	**33**	**640.**
All,	**35**	**640.**

EAST SIDE GRANT—Josephine County—Continued

Township 36 *South, Range* 8 *West, W. M.*

Part of Section.	Sec.	Acres
All,	1	640.
All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
All,	11	640.
All,	13	640.
All,	15	640.
All,	17	640.
All,	19	640.
All,	21	640.
All,	23	640.
All,	25	640.
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.
All,	35	640.

Township 38 *South, Range* 8 *West, W. M.*

All,	5	640.

Unsurveyed Primary.

Township 38 *South, Range* 8 *West, W. M.*

NE ¼,	7	160.
NE ¼, N ½ of NW ¼, N ½ of SE ¼,	17	320.
N ½, E ½ of SE ¼,	21	400.

EAST SIDE GRANT—Josephine County—Continued

Township 32 *South, Range* 9 *West, W. M.*

Part of Section.	Sec.	Acres
All,	7	640.
All,	9	640.
S ½ of S ½,	11	160.
W ½ of W ½,	13	160.
All,	15	640.
All,	17	640.
All,	19	640.
All,	21	640.
All,	23	640.
All,	25	640.
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.
All,	35	640.

Township 33 *South, Range* 9 *West, W. M.*

All,	1	640.
All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
All,	11	640.
All,	13	640.
All,	15	640.
All,	17	640.

Township 33 *South, Range* 9 *West, W. M.*

Part of Section.	Sec.	Acres
All,	19	640.
All,	21	640.
All,	23	640.
All,	25	640.
All,	27	640.

Unsurveyed Primary.

Township 33 *South, Range* 9 *West, W. M.*

All,	29	640.
All,	31	640.
All,	33	640.
All,	35	640.

Township 34 *South, Range* 9 *West, W. M.*

All,	1	640.
All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
All,	11	640.
All,	13	640.
All,	15	640.
All,	17	640.
All,	19	640.
All,	21	640.
All,	23	640.

EAST SIDE GRANT—Josephine County—Continued

Township 34 South, Range 9 West, W. M.

Part of Section	Sec.	Acres
All,	**25**	**640.**
All,	**27**	**640.**
All,	**29**	**640.**
All,	**31**	**640.**
All,	**33**	**640.**
All,	**35**	**640.**

Township 35 South, Range 9 West, W. M.

Part of Section	Sec.	Acres
All,	**1**	**640.**
All,	**3**	**640.**
All,	**5**	**640.**
All,	**7**	**640.**
All,	**9**	**640.**
All,	**11**	**640.**
All,	**13**	**640.**
All,	**15**	**640.**
All,	**17**	**640.**
E 1/2, N 1/2 of NW 1/4, SE 1/4 of NW 1/4, and E 1/2 of SW 1/4,	**19**	**520.**
All,	**21**	**640.**

Unsurveyed Primary.

Part of Section	Sec.	Acres
All,	**23**	**640.**
All,	**25**	**640.**
All,	**27**	**640.**
All,	**29**	**640.**

EAST SIDE GRANT—Josephine County—Continued

Township 35 South, Range 9 West, W. M.

Part of Section	Sec.	Acres
E ½, E ½ of W ½,	31	480.
All,	33	640.
All,	35	640.
Township 36 South, Range 9 West, W. M.		
All,	1	640.
All,	3	640.
All,	5	640.
E ½ of E ½,	7	160.
All,	9	640.
All,	11	640.
All,	13	640.
All,	15	640.
N ½, E ½ of SW ¼, SE ¼,	17	560.
All,	21	640.
All,	23	640.
All,	25	640.
All,	27	640.
E ½ of E ½,	29	160.
E ½, E ½ of W ½,	33	480.
All,	35	640.
Township 37 South, Range 9 West, W. M.		
All,	1	640.
All,	3	640.
All,	11	640.
All,	13	640.
E ½,	23	320.
All,	25	640.

EAST SIDE GRANT—Josephine County—Concluded.

Township 34 *South, Range* 10 *West, W. M.*

Part of Section	Sec.	Acres
All,	13	640.
All,	23	640.
All,	25	640.

Unsurveyed Primary.

Township 34 *South, Range* 10 *West, W. M.*

NE ¼, SE ¼,	27	480.
E ½, N ½ of NW ¼, SE ¼ of NW ¼, E ½ of SW ¼,	35	520.

Township 35 *South, Range* 10 *West, W. M.*

All,	1	640.
N ½ of NE ¼, SE ¼ of NE ¼, NE ¼ of NW ¼, E ½ of SE ¼,	13	240.
Total acres,		127,345.00

Selected Indemnity.

Township 39 *South, Range* 7 *West, W. M.*

Lot 3 and SW ¼ of SE ¼,	23	81.41
N ½ of NE ¼, SW ¼ of NE ¼, W ½, NW ¼ of SE ¼, S ½ of SE ¼,	25	560.

Township 40 *South, Range* 8 *West, W. M.*

Lot 3,	23	37.63
Total acres,		679.04

EAST SIDE GRANT—Continued.

DOUGLAS COUNTY.

Township 27 South, Range 2 West, W. M.

Part of Section.	Sec.	Acres
Unpatented Primary.		
SE ¼ of NE ¼, E ½ of SW ¼, E ½ of SE ¼, Lots 3, 4, 5, 6, 7, 8 and 9,	7	467.64
S ½ of N ½, S ½, Lots 1, 2, 3 and 4,	9	640.24
Township 32 South, Range 2 West, W. M.		
Lots 1, 2, 3, 4,	19	159.76
Township 32 South, Range 3 West, W. M.		
Lot 5, SW ¼ of NW ¼, W ½ of SW ¼,	1	162.71
W ½, Lots 3, 4, 9 and 10,	13	480.
Township 22 South, Range 4 West, W. M.		
SW ¼ of NE ¼, S ½ of NW ¼, W ½ of SE ¼, Lots 1, 2, 3, 4, 5, 6 and 7,	3	486.80
E ½,	27	320.
Township 28 South, Range 4 West, W. M.		
NW ¼,	17	160.
Township 30 South, Range 4 West, W. M.		
Unpatented Primary.		
Lot 2,	1	21.96
Township 30 South, Range 5 West, W. M.		
NE ¼, E ½ of W ½,	9	320.
SW ¼ of SW ¼,	31	44.50

EAST SIDE GRANT—Douglas County—Continued.

Township 32 South, Range 5 West, W. M.

Part of Section.	Sec.	Acres
Lots 3 and 4, S ½ of NW ¼, SW ¼,	3	315.25
Lots 1 and 2, S ½ of NE ¼ and S ½,	5	471.02
Lots 1, 2, 3, 4, 5, 6, 7 and 8,	25	288.75
Lots 1, 2, 3, 4, 5, 6 and 7, NW ¼ of SW ¼,	27	356.97
All,	31	652.41
All,	33	651.41
Lots 1, 2, 3, 4, 5, E ½ of NE ¼, NE ¼ of SE ¼,	35	339.43

Township 24 South, Range 6 West, W. M.

Lot 6,	21	25.88

Township 29 South, Range 6 West, W. M.

E ½ of W ½, SE ¼, Lots 1, 2, 3 and 4,	29	464.
All,	31	704.63
NW ¼, N ½ of SW ¼, Lots 1 and 2,	33	323.75

Township 31 South, Range 7 West, W. M.

NE ¼,	29	160.

Township 33 South, Range 7 West, W. M.

Lot 1,	3	46.32
N ½,	7	322.17
N ½,	9	320.

Township 22 South, Range 8 West, W. M.

NW ¼ of SW ¼,	33	40.

EAST SIDE GRANT—Douglas County—Continued.

Township 25 *South, Range* 9 *West, W. M.*

Part of Section.	Sec.	Acres
All,	1	599.40
All,	13	640.
E ½, E ½ of W ½,	23	480.
All,	25	640.
All,	35	640.

Unpatented Primary.

Township 29 *South, Range* 9 *West, W. M.*

All,	15	647.16

Township 31 *South, Range* 9 *West, W. M.*

NE ¼, E ½ of NW ¼, E ½ of SW ¼, N ½ of SE ¼, SE ¼ of SE ¼, Lots 2 and 3,	19	519.92
NW ¼,	29	160.
All,	31	639.60
All,	33	640.
Total acres,		14,351.68

Unsurveyed Primary.

Township 26 *South, Range* 2 *West, W. M.*

All,	19	640.
All,	21	640.
All,	29	640.
All,	31	640.
All,	33	640.

EAST SIDE GRANT—Douglas County—Continued.

Township 27 South, Range 2 West, W. M.

Part of Section.	Sec.	Acres
All,	17	640.
All,	19	640.
All,	21	640.
N ½, SE ¼,	29	480.
S ½,	33	320.

Township 28 South, Range 2 West, W. M.

All,	5	640.
NE ¼,	7	160.
All,	9	640.
All,	17	640.
All,	19	640.
All,	21	640.
W ½,	27	320.
All,	29	640.
All,	31	640.
All,	33	640.

Unsurveyed Primary.

Township 29 South, Range 2 West, W. M.

All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
W ½ of W ½,	11	160.
All,	15	640.
All,	17	640.

EAST SIDE GRANT—Douglas County—Continued.

Township 29 *South, Range* 2 *West, W. M.*

Part of Section.	Sec.	Acres
All,	19	640.
All,	21	640.
W ½ of W ½,	23	160.
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.
W ½,	35	320.

Township 30 *South, Range* 2 *West, W. M.*

Part of Section.	Sec.	Acres
All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
W ½ of W ½,	11	160.
N ½ ,	15	320.
All,	17	640.
All,	19	640.
W ½,	21	320.
All,	31	640.

Township 31 *South, Range* 2 *West, W. M.*

Part of Section.	Sec.	Acres
All,	5	640.
All,	7	640.
W ½ of NE ¼, NW ¼, N ½ of SW ¼, SW ¼ of SW ¼, NW ¼ of SE ¼,	17	400.
N½, SW ¼, W ½ of SE ¼,	19	560.

EAST SIDE GRANT—Douglas County—Continued.

Township 28 *South, Range* 3 *West, W. M.*

Part of Section	Sec.	Acres
All,	5	640.
All,	7	640.

Unsurveyed Primary.

Township 28 *South, Range* 3 *West, W. M.*

Part of Section	Sec.	Acres
All,	17	640.
NE 1/4, S 1/2,	19	480.
All,	21	640.
SW 1/4 of NW 1/4, S W 1/4, S 1/2 of SE 1/4,	23	280.
All,	25	640.
All,	27	640.
All,	29	640.
E 1/2, NW 1/4,	31	480.
All,	33	640.
All,	35	640.

Township 32 *South, Range* 3 *West, W. M.*

Part of Section	Sec.	Acres
All,	19	640.
All,	21	640.
All,	23	640.
All,	25	640.
All,	27	640.
All,	29	640.

Township 29 *South, Range* 7 *West, W. M.*

Part of Section	Sec.	Acres
All,	23	640.
All,	25	640.
All,	35	640.

EAST SIDE GRANT—Douglas County—Continued.

Township 30 *South, Range* 7 *West, W. M.*

Part of Section	Sec.	Acres
SW ¼,	33	160.

Township 31 *South, Range* 7 *West, W. M.*

Part of Section	Sec.	Acres
N ½ of N ½,	5	160.

Township 25 *South, Range* 8 *West, W. M.*

Part of Section	Sec.	Acres
All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
All,	17	640.
All,	19	640.
All,	29	640.
All,	31	640.

Unsurveyed Primary.

Township 33 *South, Range* 8 *West, W. M.*

Part of Section	Sec.	Acres
All,	1	640.
All,	3	640.
NE ¼,	5	160.

Township 32 *South, Range* 9 *West, W. M.*

Part of Section	Sec.	Acres
All,	1	640.
All,	3	640.
All,	5	640.
N ½, N ½ of S ½,	11	480.
E ½, E ½ of W ½,	13	480.
Total acres,		49,880.00

EAST SIDE GRANT—Continued.

JACKSON COUNTY.

Township 39 *South, Range* 1 *East, W. M.*

Part of Section	Sec.	Acres
Unpatented Primary.		
SE ¼ of SE ¼ of NW ¼,	27	10.
Lot 1,	29	40.46
Township 36 *South, Range* 2 *East, W. M.*		
SW ¼ of NE ¼,	29	40.
Township 37 *South, Range* 2 *East, W. M.*		
Lots 3 and 4,	31	85.19
Township 38 *South, Range* 2 *East, W. M.*		
W ½ of NE ¼,	33	80.
Township 39 *South, Range* 3 *East, W. M.*		
SW ¼,	33	160.
Township 38 *South, Range* 4 *East, W. M.*		
SE ¼ of NE ¼, E ½ of SE ¼,	19	120.
Township 38 *South, Range* 1 *West, W. M.*		
Unpatented Primary.		
SW ¼ of SE ¼,	35	40.
Township 39 *South, Range* 1 *West, W. M.*		
Lot 2, NW ¼ of SE ¼,	1	73.40
N ½ of NW ¼,	33	80.
Unpatented Primary.		
Township 41 *South, Range* 1 *West, W. M.*		
All,	1	640.

EAST SIDE GRANT—Jackson County—Continued.

Part of Section	Sec.	Acres
Township 32 South, Range 2 West, W. M.		
All,	31	640.
S ½ of N ½, S ½,	33	480.
Township 38 South, Range 2 West, W. M.		
NE ¼,	17	160.
S ½,	25	320.
All,	35	640.
Township 39 South, Range 2 West, W. M.		
SE ¼ of NW ¼ of NW ¼,	19	10.
Township 36 South, Range 3 West.		
NW ¼ of SE ¼ of SW ¼,	33	10.
Township 37 South, Range 3 West, W. M.		
NW ¼ of NW ¼, S ½ of NW ¼,	11	120.
SE ¼ of NE ¼,	35	40.
Township 38 South, Range 3 West, W. M.		
SE ¼,	18	160.
Township 40 South, Range 3 West, W. M.		
E ½ of Lot 2, SW ¼ of Lot 2,	5	29.63
Lots 1, 2, 3, 4 and 6,	19	196.
Township 36 South, Range 4 West, W. M.		
S ½ of SW ¼ of S W ¼,	1	20.
Township 37 South, Range 4 West, W. M.		
NE ¼ of SE ¼,	1	40.
E ½ of W ½ of E ½ of SW ¼ of NE ¼,		

EAST SIDE GRANT—Jackson County—Continued.

Township 37 *South, Range* 4 *West, W. M.*

Part of Section	Sec.	Acres
W ½ of W ½ of E ½ of SE ¼ of NW ¼,	19	10.
E ½ of NW ¼,	25	80.
Total acres,		4,324.68

Township 38 *South, Range* 2 *East, W. M.*

Unsurveyed Primary.

N ½,	19	320.

Unsurveyed Primary.

Township 39 *South, Range* 3 *East, W. M.*

NE ¼ and S½,	27	480.
N ½ and SW ¼,	35	480.

Township 41 *South, Range* 3 *East, W. M.*

All,	5	640.
All,	7	640.
All,	9	640.

Township 38 *South, Range* 4 *East, W. M.*

All,	13	640.
All,	23	640.
All,	25	640.

Township 33 *South, Range* 1 *West, W. M.*

NW ¼ of NE ¼, S ½ of NE ¼, NW ¼, S ½,	15	600.

Township 41 *South, Range* 1 *West, W. M.*

All,	3	640.

EAST SIDE GRANT—Jackson County—Continued.

Township 41 *South, Range* 1 *West, W. M.*

Part of Section.	Sec.	Acres
All,	5	640.
All,	7	640.
All,	9	640.
All,	11	640.
N ½,	15	320.
N ½,	17	320.

Township 39 *South, Range* 2 *West, W. M.*

Part of Section.	Sec.	Acres
All,	1	640.
All,	3	640.
All,	11	640.
All,	13	640.
All,	15	640.

Township 39 *South, Range* 2 *West, W. M.*

Part of Section.	Sec.	Acres
All,	25	640.
All,	35	640.

Township 41 *South, Range* 2 *West, W. M.*

Part of Section.	Sec.	Acres
All,	1	640.
All,	3	640.

Unsurveyed Primary.

Township 41 *South, Range* 2 *West, W. M.*

Part of Section.	Sec.	Acres
All,	5	640.
All,	7	640.
All,	9	640.
All,	11	640.
N ½,	13	320.
N ½,	15	320.
N ½,	17	320.

EAST SIDE GRANT—Jackson County—Continued.

Part of Section.	Sec.	Acres
Township 32 South, Range 3 West, W. M.		
All,	31	640.
All,	33	640.
All,	35	640.
Township 38 South, Range 3 West, W. M.		
All,	7	640.
All,	9	640.
N ½,	13	320.
All,	15	640.
All,	17	640.
All,	19	640.
All,	25	640.
E ½,	35	320.
Township 39 South, Range 3 West, W. M.		
All,	5	640.
All,	7	640.
All,	17	640.
All,	19	640.
S ½,	23	320.
W ½ and SE ¼,	25	480.
All,	29	640.
All,	31	640.
All,	35	640.
Township 40 South, Range 4 West, W. M.		
NW ¼,	3	160.
N ½,	5	320.
Total acres,		31,000.

Selected Indemnity.

Township 40 *South, Range* 4 *West, W. M.*

Part of Section	Sec.	Acres
NW ¼,	27	160.
Total acres,		160.

WEST SIDE GRANT.

Act of May 4, 1870.

County	Primary	Surveyed
Multnomah,		.26
Washington,		40.
Yamhill,		40.
Total,		80.26

WEST SIDE GRANT.

MULTNOMAH COUNTY.

Township 1 *North, Range* 1 *East, W. M.*

Part of Section	Sec.	Acres
Unpatented Primary.		
Lot 8,	19	.26
Total acres,		.26

YAMHILL COUNTY.

Township 4 *South, Range* 6 *West, W. M.*

NW ¼ of NE ¼,	13	40.
Total acres,		40.

WEST SIDE GRANT—Continued.

WASHINGTON COUNTY.

Township 2 North, Range 3 West, W. M.

Part of Section	Sec.	Acres
SW 1/4 of SE 1/4,	21	40.
Total acres,		40.

Exhibit No. 7

Statement showing right of way through unsold East Side Grant Lands required for Oregon and California Railroad. (Lands patented except otherwise noted.)

DOUGLAS COUNTY, OREGON.

Description					
Subdivision	Sec.	Twp.	Rge.	Right of Way to be Reserved	
		W. M.			
Lot 5 in SE 1/4 of SW 1/4	29	24S	5W	100 ft. wide on each side	of center line of main track
W 1/2 of SW 1/4	21	29S	5W	do	do
E 1/2 of SE 1/4	1	30S	6W	100 ft. wide on west side	do
				150 ft. wide on east side	do
SW1/4 of SW 1/4	31	"	"	100 ft. wide on each side	do
SE 1/4 of SE 1/4	33	30S	7W	do	do
N 1/2	35	"	"	do	do
NE 1/4 of SE 1/4	35	"	"	do	do
NE 1/4 of NW 1/4	1	31S	7W	do	do

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DOUGLAS COUNTY, OREGON—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Right of Way to be Reserved
	W. M.			
NW ¼ of SW ¼	9	31S	7W	100 ft. wide on each side of center line of main track
S ½ of SW ¼	9	“	“	do do
N ½ of NW ¼	17	“	“	do do
W ½ of SW ¼ of NW ¼	17	“	“	do do
NW ¼	19	“	“	do do
SW ¼ of SW ¼	7	32S	7W	do do
W ½ of NE ¼	19	“	“	do do
NW¼ of NE¼ of NW¼	19	“	“	do do
SE ¼ of NW ¼	19	“	“	do do
NE ¼ of SE ¼	19	“	“	do do
E ½ of NW ¼ of SE ¼	19	“	“	do do
SE ¼ of NE ¼	29	“	“	do do
Lot 1 or NE ¼ of NE ¼	3	33S	7W	(unpatented) do do

Douglas County, Oregon—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Right of Way to be Reserved
		W. M.		
S ½ of SE ¼	23	31S	8W	100 ft. wide on each side of center line of main track
W ½ of W ½	35	"	"	do do
S ½ of SW ¼	1	32S	8W	100 ft. wide on north side do 150 ft. wide on south side do
E ½ of NE ¼	13	32S	8W	100 ft. wide on each side of center line of main track
NE ¼ of SE ¼	13	"	"	do do

Josephine County, Oregon.

Subdivision	Sec.	Twp.	Rge.	Right of Way to be Reserved
NW ¼ of NE ¼	21	36S	5W	100 ft. wide on each side of center line of main track
W ½ of NE ¼	15	33S	6W	do do
NE ¼ of NW ¼	15	"	"	do do
W ½ of NE ¼; NE ¼ of NW ¼	15	"	"	Reserve for reconstruction of railroad on account of change of line.

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JOSEPHINE COUNTY, OREGON—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Right of Way to be Reserved
		W. M.		
W ½ of NE ¼..........	29	34S	6W	100 ft. wide on west side of center line of main track 175 ft. wide on east side of center line
E ½ of NW ¼..........	29	"	"	do do
NE ¼ of SW ¼.........	29	"	"	do do
E ½ of NE ¼..........	33	"	"	100 ft. wide on each side do
NW ¼ of NW ¼.......	3	35S	6W	do do
W ½ of NE ¼..........	9	"	"	do do
E ½ of NW ¼..........	9	"	"	do do
SW ¼ of NE ¼.........	27	"	"	do do
NE ¼ of SE ¼.........	27	"	"	do do
SW ¼ of NW ¼........	1	36S	6W	do do
NW ¼ of SW ¼........	1	"	"	do do
NE ¼ of SE ¼.........	25	33S	7W	do do

JOSEPHINE COUNTY, OREGON—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Right of Way to be Reserved
		W. M.		
NW ¼ of NE ¼	1	34S	7W	100 ft. wide on each side of center line of main track

JACKSON COUNTY, OREGON.

Description Subdivision	Sec.	Twp.	Rge.	Right of Way to be Reserved
NW ¼ of NE ¼	1	41S	1E	100 ft. wide on each side of center line of main track
NE ¼	17	40S	2E	do do
E ½ of SE ¼	17	"	"	do do
SE ½ of SE ¼	19	"	"	do do
Lot 2	31	"	"	do do
W ½ of NW ¼	7	41S	2E	do do
Lot 8	11	36S	3W	do do
Lot 7	13	"	"	do do
Lots 3 and 4.............	19	36S	4W	do do
NE ¼ of NE ¼	27	"	"	do do

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Exhibit No. 8

Schedule of unsold lands of the East Side Oregon and California Railroad Company grant—which land are under reservation from sale on account of timber, iron, coal, or oil, which they are known or supposed to contain and which substances are necessary to the railroad company in the operation and maintenance of its railroad.

CLACKAMAS COUNTY.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
		W. M.						
NE ¼, N ½ of NW ¼......	1	6S	2E	2				440.20
SE ¼ of NW ¼, SE ¼ of SW ¼, NE ¼ of SE ¼, S ½ of SE ¼	1	“	“					
E ½ of NE ¼, SW ¼ of NW ¼, SW¼ & W½ of SE¼.	13	“	“	2				360.
N½ of NE¼, SW¼ of NE¼								

Clackamas County—Continued

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
and NW ¼	15	6S	2E	2				280.
NW¼ of NE¼, E½ of NW ¼, NE¼ of SW¼, Lots 3 and 4, NW¼ of SE¼ and SE¼ of SE¼	19	"	"	5				315.36
NE¼, N½ of NW¼	29	"	"	5				400.
SE¼ of NW¼, N½ of SE¼, SE¼ of SE ¼	29	"	"					
N ½ and SE ¼	33	"	"	5				480.
E ½, N ½ of N W¼	3	7S	2E	2				516.38
SE¼ of NW¼, E½ of SW¼	3	"	"					
NE ¼, NE ¼ of SE ¼	5	"	"	2				198.65
SE¼ of NE¼ & E½ of SE¼	9	"	"	2				120.
								3,110.59

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Marion County.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
SE¼ of NW¼ & W½ of SE¼	1	7S	1E	5				120.
Lots 1, 5, 6	7	"	"	2				36.72
S ½	11	"	"	5				320.
W½ of NE¼, W½ of NW¼, W½ of SW¼, NE¼ of SE ¼	13	7S	1E	5				280.
NE ¼ of NE ¼ and E ½ of SE ¼	23	"	"	5				120.
SW ¼ of SW ¼	29	6S	2E	5				40.
W ½, W ½ of SE ¼ and SE ¼ of SE ¼	5	7S	2E	2				439.55
SW ¼ of NE ¼, W ½	9	"	"	2				440.
W ½ of SE ¼	9	"	"					
E ½ of SW ¼ and SE ¼	19	"	"	2 & 5				240.
								2,036.27

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
N ½, SW ¼, NW ¼ of SE ¼ and S ½ of SE ¼	3	12S	1E	25				596.42
All	5	"	"	25				642.60
								1,239.02
All that part situate in Linn County	1	15S	1W	5	586.85			
Lot 1, S ½ of NE ¼	3	"	"					
SW ¼ of NW ¼, S ½	3	"	"	5	481.62			
E ½, N ½ of NW ¼ and SW ¼ of SW ¼	5	"	"	5	441.20			
All that part situate in Linn County	7	"	"	5	102.62			

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LINN COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All that part situate in Linn County	9	15S	1W	5	377.50			
All that part situate in Linn County	11	"	"	5	40.			
All that part situate in Linn County	21	"	"	3	40.			
All	1	15S	2W	5	641.98			
E ½	3	"	"	5	320.09			
SW ¼ of NW ¼, SW ¼	9	"	"	5	320.			
NE ¼ of SE ¼ and S ½ of SE ¼	9	15S	2W					
All	11	"	"	5	640.			
All	13	"	"	5	640.			

Linn County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	15	15S	2W	5	640.			
NE ¼ of NE ¼	17	"	"	5	40.			
NE ¼ and S ½	21	"	"	5	480.			
All	27	"	"	5	640.			
All	29	"	"	5	640.			
NE ¼ of NE ¼, S ½ of NE ¼, NW ¼, S ½	31	"	"	5	620.80			
All	33	"	"	5	640.			
All	5	16S	2W	5	638.40			
E ½, SE ¼ of NW ¼	1	16S	3W	3 & 5	360.59			
				9,331.65				1,239.02

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LANE COUNTY.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All that part situate in Lane County	1	15S	1W	5	53.99			
All that part situate in Lane County	7	“	“	5	553.94			
All that part situate in Lane County	9	“	“	5	182.50			
All that part situate in Lane County	11	“	“	5	160.00			
N ½, N ½ of SW ¼	13	“	“	5	440.			
NW ¼ of SE ¼	13	“	“					
E ½	15	“	“	5	560.			
N ½ of NW ¼ and SW ¼	15	“	“					
All	17	“	“	5	640.			

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	19	15S	1W	5	659.62			
All that part situate in Lane County	21	15S	1W	3	320.			
NW ¼ of NE ¼, NW ¼	23	"	"	5	200.			
SE ¼ of SW ¼, NE ¼ of SE ¼, S½ of SE ¼	27	"	"	5	160.			
All	29	"	"	5	640.			
All	31	"	"	5	653.41			
All	3	16S	1W	5	642.60			
Lots 7 & 8	5	"	"	3 & Supp. 3	39.20			
NW ¼ of NW ¼	5	"	"					
N ½, N ½ of SW ¼	9	"	"	5	400.			
NW ¼, SW ¼ of SW ¼ &								

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
W. M.								
SE 1/4 of SE 1/4	11	16S	1W	5	240.			
S 1/2 of SW 1/4..............	13	"	"	5	80.			
NW 1/4 of NW 1/4, S 1/2 of N 1/2, N 1/2 of S 1/2 and SE 1/4 of SE 1/4	15	"	"	5	400.			
Lots 3 & 4, N 1/2 of SE 1/4, SW 1/4 of SE 1/4	17	16S	1W	3	180.76			
Lots 5, 6, 7, 8...............	19	"	"	3 & 25	241.24			
NE1/4 of SE1/4 & S1/2 of SE1/4.	19	"	"					
S 1/2 of S 1/2................	25	"	"	5	160.			
S 1/2 of S 1/2................	27	"	"	5	160.			
All	29	"	"	5	640.			

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
N ½ of NE ¼, SE ¼ of NE ¼, NW ¼	31	16S	1W	5	565.60			
NW ¼ of SW ¼, S ½ of SW ¼, NE ¼ of SE ¼, S ½ of SE ¼	31	"	"					
NE ¼, SE ¼ of NW ¼	33	"	"	5	480.			
N ½ of SW ¼, SW ¼ of SW ¼ and SE ¼	33	"	"					
All	35	"	"	5	640.			
All	23	15S	2W	5	640.			
All	25	15S	2W	5	640.			
N ½, N ½ of SE ¼	35	"	"	5	400.			
All	7	16S	2W	5	658.82			

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	17	16S	2W	5	640.			
All	19	"	"	5	658.78			
All	21	"	"	5	640.			
NW ¼ of SW ¼	23	"	"	3	40.			
E ½ of NE ¼, SE ¼	25	"	"	3	268.44			
Lots 5 and 6	25	"	"					
NW ¼	27	"	"	3	160.			
S ½ of NE ¼, NW ¼ & S ½	29	"	"	5	560.			
All	31	"	"	5	655.26			
Lots 1, 2, 3 & W ½	33	"	"	3	366.98			
N ½ of N ½	5	17S	2W	3	171.40			
NW ¼ of NE ¼, S ½ of NE ¼, W ½, Lots 1, 2, 3, N ½								

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
of SE ¼	7	17S	2W	3 & 25	617.50			
Lots 1, 2, 3, 5, 9	13	"	"	3 & 139	215.61			
NW ¼ of NW ¼, NW ¼ of SW ¼	13	"	"					
NE ¼, Lots 1 & 2	15	"	"	3	316.40			
S ½ of NW ¼	15	"	"					
NE ¼ of NE ¼	23	"	"	3	40.			
SE ¼ of NE ¼, Lots 3 and 4	21	19S	2W	10				66.96
N ½ of N ½, SE ¼ of NE ¼, NE ¼ of SE ¼ & S ½ of SE ¼	27	"	"	10				320.
N ½, N ½ of SW ¼, SW ¼ of SW ¼, N ½ of SE ¼,								

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
SE ¼ of SE ¼	13	16S	3W	3	560.			
E ½ of SE ¼	1	17S	3W	3	80.			
Lot 4	5	"	"	3	17.59			
W ½ of NW ¼	11	"	"	3	80.			
NE ¼ of NE ¼	18	"	"	3	40.			
N ½ of NE ¼ & NW ¼ of NW ¼	1	21S	4W	10				119.66
N ½, N ½ of SW ¼	8	"	"	10				404.80
NE ¼, N ½ of NW ¼	5	"	"	10				235.54
W ½ of NE ¼, NW ¼ and S ½	28	"	"	10				560.
All	25	"	"	10				640.
E ½, E ½ of SW ¼	35	"	"	10				400.

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
SW ¼ of NE ¼, NW ¼ of NW ¼, S ½ of NW ¼ and S ½	1	22S	4W	10				480.18
E ½, E ½ of W ½	11	"	"	10 & 25				480.
E ½, N ½ of NW ¼, SW ¼ of NW ¼ & SW ¼	13	"	"	10 & 25				600.
W ½ of NE ¼, SE ¼	23	"	"	25				240.
N ½, SE ¼	25	"	"	25				480.
Lot 4	13	18S	5W	3				11.09
N ½ of NE ¼, W ½	1	19S	5W	10	480.78			
W ½ of SE ¼	1	"	"					
All	5	"	"	10	629.66			
All	7	"	"	10	641.48			

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
W. M.								
NW ¼ of NE ¼, N ½ of NW ¼, SW ¼ of NW ¼, NW ¼ of SW ¼ and S ½ of S ½	9	19S	5W	10 & 25	360.			
N ½ of NE ¼, SE ¼ of NE ¼, N ½ of SE ¼........	11	"	"	10	200.			
Lot 7	13	"	"	10	1.57			
W ½ of W ½, SE ¼ of SW ¼, SW ¼ of S E¼......	15	"	"	10	240.			
N ½, SW ¼, N ½ of SE ¼, SW ¼ of SE ¼	17	"	"	10	600.			
All	19	"	"	10	640.22			
N ½, SW ¼, W ½ of SE ¼..	21	"	"	10	560.			

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
SW ¼ of NW ¼, SW ¼ & W ½ of SE ¼	27	19S	5W	10	280.			
All	29	"	"	10	640.			
All	31	"	"	10 & 25	645.			
All	33	"	"	10	640.			
All	3	20S	5W	10	635.03			
All	5	"	"	10	644.16			
E ½, N ½ of NW ¼, SE ¼ of NW ¼ & S ½ of SW ¼	7	"	"	10	524.99			
All	9	"	"	10	640.			
W ½, Lots 2, 3, 4, 5	11	"	"	10	412.21			
W ½ of NE ¼, NW ¼	15	"	"	10	419.33			
N ½ of SW ¼, SW ¼ of SW ¼, Lots 1 & 6	15	"	"					

OUND VERTICAL IN BOOK

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
E ½, E ½ of NW ¼, SW ¼	17	20S	5W	10	560.			
All	19	"	"	10	647.80			
N ½ of NE ¼, SW ¼	21	"	"	10 & 25	360.			
W½ of SE¼, SE¼ of SE¼	21	"	"					
NW ¼ of NW ¼, S ½ of NW ¼, SW ¼, S ½ of SE ¼	23	"	"	10 & 88	360.			
N ½, SW ¼, N ½ of SE ¼	27	"	"	10	560.			
NE ¼, N ½ of NW ¼, SW ¼ of NW ¼, SW ¼ and NE ¼ of SE ¼	29	"	"	10	480.			
All	31	"	"	10	647.20			
All	33	"	"	10	640.			

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	35	20S	5W	10	640.			
N ½, N ½ of SW ¼, SE ¼ of SW ¼ & SE ¼	1	21S	5W	10	600.			
Lots 2, 3, 4	3	“	“	25	122.06			
Lot 1	5	“	“	25	40.72			
Lot 7, W ½ of NW ¼......	1	18S	6W	3	114.62			
N ½, N ½ of S ½, and SE ¼ of SE ¼	3	“	“	3 & 139	569.89			
N ½, N ½ of SW ¼, SE ¼ of SW ¼ and SE ¼.....	5	“	“	24 & 11	668.20			
S ½ of NE ¼, NW ¼, S ½..	7	“	“	11	584.41			
NW ¼ of SW ¼, S ½ of SW ¼ & SE ¼	9	“	“	3	280.			

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LANE COUNTY—Continued.

Description				Patent No.	Timber	Iron	Water	Coal or Oil
Subdivision	Sec.	Twp.	Rge.					
W. M.								
NE ¼, SE ¼ of NW ¼, E ½ of SW ¼ and SE ¼	11	18S	6W	3	440.			
W ½ of NE ¼, SE ¼ of NE ¼, N ½ of NW ¼, SE ¼ of NW ¼, NE ¼ of SW ¼	13	"	"	3	280.			
N ½ of NW ¼, SW ¼ of NW ¼, NW ¼ of SW ¼	15	"	"	3	160.			
All	17	"	"	11	640.			
All	19	"	"	11	664.60			
All	21	"	"	24	640.			
NE ¼ of SW ¼, S ½ of S ½, Lots 3 & 4	23	"	"	3	248.			
N ½, N ½ of SW ¼, SW ¼								

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
		W. M.						
of SW ¼ & SE ¼	25	18S	6W	10	600.			
All	27	"	"	10	640.			
All	29	"	"	11	640.			
All	31	"	"	11 & 89	664.80			
All	33	"	"	24	646.40			
W ½ of NE ¼, W ½, Lots 1 & 2, NW ¼ of SE ¼	35	"	"	10	524.88			
All	1	19S	6W	10	639.41			
All	3	"	"	10	637.48			
All	5	"	"	10	643.68			
All	7	"	"	10	638.			
N ½, SW ¼, S ½ of SE ¼	9	"	"	10	560.			
N ½, N ½ of SW ¼, SW ¼								

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LANE COUNTY—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
		W. M.						
of SW ¼, E ½ of SE ¼	11	19S	6W	10	520.			
All	13	"	"	10	640.			
All	15	"	"	10	640.			
All	17	19S	6W	10	640.			
All	19	"	"	10	640.30			
All	21	"	"	10	640.			
All	23	"	"	10	640.			
All	25	"	"	10	640.			
All	27	"	"	10	640.			
All	29	"	"	10	640.			
All	31	19S	6W	10	639.80			
All	33	"	"	10	640.			
All	35	"	"	10	640.			

Lane County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
N ½, N ½ of SW ¼, SE ¼ . .	1	20S	6W	10 & 88	563.68			
N ½, N ½ of SW ¼, SE ¼ of SW ¼ and SE ¼	3	"	"	10	606.62			
All	5	"	"	10	640.40			
All	7	"	"	10	635.68			
All	9	"	"	10	640.			
N ½ of NE ¼, SW ¼ of NE ¼, E ½ of NW ¼, NE ¼ of SW ¼, S ½ of SW ¼ and SE ¼	11	"	"	10	480.			
All	13	"	"	10	640.			
All	15	"	"	10	640.			
All	17	"	"	10	640.			
NE ¼, E ½ of NW ¼, Lot 1								

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
	W. M.							
and N ½ of SE ¼	19	20S	6W	10	360.42			
All	21	"	"	10	640.			
All	23	"	"	10	640.			
N ½	25	"	"	10	320.			
N ½ and SW ¼	1	17S	7W	3 Ind. 3 Prim	479.88			
All	3	17S	7W	3	639.84			
All	5	"	"	146	616.68			
All	7	"	"	146	642.20			
All	9	"	"	3	640.			
All	11	"	"	3	640.			
SW ¼ of NW ¼ & S ½	13	17S	7W	3	360.			
All	15	"	"	3	640.			
All	17	"	"	3	640.			

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
NW ¼ of NE ¼, NW ¼	19	17S	7W	146 146 & 156	362.56			
S ½ of S ½	19	"	"					
All	21	"	"	3	640.			
N ½ of NE ¼, SE ¼ of NE ¼, N ½ of NW ¼ and SW ¼ of NW ¼	23	"	"	3	240.			
NE ¼ and S ½	25	"	"	3	480.			
NW ½ of NW ¼, S ½ of SW ¼ and SE ¼	27	"	"	3	280.			
E ½ of NE ¼, W ½ of W ½ and SE ¼	29	"	"	3	400.			
N ½ and SW ¼	31	"	"	146	481.52			

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	33	17S	7W	3	640.			
All	35	"	"	3	640.			
All	1	18S	7W	8	695.81			
N ½ and SE ¼	3	"	"	8	533.28			
N ½	7	"	"	8	313.32			
All	9	"	"	8	640.			
NE ¼ of NE ¼, NW ¼ of SW¼, S½ of NW¼, S½	11	"	"	8	480.			
All	13	"	"	8	640.			
All	15	"	"	8	640.			
All	17	"	"	8	640.			
All	19	"	"	8	633.18			
All	21	"	"	8	640.			

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	23	18S	7W	8	640.			
All	25	"	"	8	640.			
All	27	"	"		640.			
All	29	"	"	8	640.			
All	31	"	"	8	638.07			
All	33	18S	7W	8	640.			
All	35	18S	7W	8	640.			
All	1	19S	7W	6, 8 & 24	640.80			
All	3	"	"	6 & 8	646.22			
SE ¼ of NE ¼, Lots 1 & 4, S ½	5	"	"	11 & 73	402.			
All	7	"	"	11 & 73	390.99			
All	9	"	"	11	630.32			

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	11	19S	7W	10	640.			
All	13	"	"	10	640.			
All	15	"	"	10	640.			
All	17	"	"	11	640.			
NE ¼ and Lot 1............	19	"	"	11	181.97			
Lots 1, 2, 6, 7, 8, 9, 10, 11, 12 15, 16	21	"	"	24	428.42			
All	23	"	"	10	640.			
N ½ of NE ¼, S ½ of SE ¼	25	"	"	10	160.			
All	27	"	"	10	640.			
All	35	"	"	10	640.			
All	1	20S	7W	24	727.44			
All	3	"	"	24	746.20			
All	11	20S	7W	24	640.			

LANE COUNTY—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
		W. M.						
N ½	13	20S	7W	24	320.			
N ½ of NE ¼	15	"	"	24	80.			
All	1	17S	8W	8	644.44			
N ½, NW ¼ of SW ¼, S ½ of SW ¼, SW ¼ of SE ¼	3	"	"	8 & 22	485.39			
All	5	"	"	8	645.72			
E ½, N ½ of NW ¼, SE ¼ of NW¼, NE¼ of SW¼	9	"	"	8 & 22	480			
All	11	17S	8W	8	640.			
All	13	"	"	8	640.			
N ½ and SE ¼	17	"	"	8	480.			
All	21	"	"	8	640.			
All	23	"	"	8	640.			

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LANE COUNTY—Continued.

Description				Patent No.	Timber	Iron	Water	Coal or Oil
Subdivision	Sec.	Twp.	Rge.					
		W. M.						
All	25	17S	8W	8	640.			
All	27	“	“	8	640.			
E ½ of E ½	33	“	“	8	160.			
All	35	“	“	8	640.			
NW ¼ of NE ¼, NW ¼, W ½ of SW ¼	1	18S	8W	8 & 22	280.66			
All	3	“	“	8	642.15			
All	9	18S	8W	8	640.			
N ½, SW ¼, NW ¼ of SE ¼, S ½ of SE ¼	11	“	“	8	600.			
S ½ of NE ¼, W ½ of NW ¼, E ½ of SW ¼, and SE ¼	13	“	“	8	400.			

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
W. M.								
N ½, S ½ of SW ¼, NE ¼ of SE ¼	15	18S	8W	8	440.			
N ½ and SW ¼	17	"	"	8	480.			
All	19	"	"	8	635.58			
NE ¼, W ½ of NW ¼, SW ¼, NE ¼ of SE ¼, S ½ of SE ¼	21	"	"	8 & 11	520.			
SE ¼ of NE ¼, SW ¼ of NW ¼ and S ½	23	"	"	8 & 22	400.			
All	25	"	"	8	640.			
All	27	"	"	8	640.			
W ½ of NE ¼, W ½ & SE ¼	29	"	"	8	560.			
All	31	"	"	8	639.68			

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Lane County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	33	18S	8W	8	640.			
N ½, SW ¼, N ½ of SE ¼, SE ¼ of SE ¼	35	"	"	8	600.			
All	1	19S	8W	11	844.			
Lots 10, 11 & W ½ of SE ¼	3	19S	8W	73	160.			
All	5	"	"	11	785.18			
N ½ of N ½, SE ¼ of NE ¼ and SE ¼ of SE ¼	11	19S	8W	11 & 73	240.			
NE ¼, N ½ of N W¼, SE ¼ of NW¼, NE¼ of SE¼	13	"	"	73	320.			
					110,576.66			5,038.23

DOUGLAS COUNTY.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
W. M.								
All	1	26S	2W	20				642.84
All	3	"	"	20				638.84
All	5	"	"	42				635.18
All	7	"	"	42				636.80
All	9	"	"	42				640.
All	11	"	"	20				640.
All	13	"	"	20				640.
N ½ of NE ¼, SW ¼ of NE ¼, NW ¼ & S ½	15	"	"	20				600.
N ½ of NE ¼, SE ¼ of NE ¼, NW ¼, N ½ of SW ¼, SW ¼ of SW ¼ & SE ¼ of SE ¼	17	"	"	42				440.

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
NE ¼, NE ¼ of NW ¼, S ½ of NW ¼ & S ½	23	26S	2W	20 & 89				600.
All	25	"	"	20				640.
SE ¼	35	26S	2W	20				160.
E ½, N ½ of NW ¼, SE ¼ of NW ¼, and S ½ of SW ¼	1	26S	3W	42				521.54
N ½ of NE ¼ and NW ¼	3	"	"	42				233.98
SE ¼ of SW ¼ and SE ¼	9	"	"	13 & 208				200.
S ½	11	26S	3W	42				323.32
All	13	"	"	42				643.60
All	15	"	"	13 & 42				640.
E½ of NE¼, NE¼ of SE¼	21	"	"	13				120.
All	23	"	"	42				640.

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	25	26S	3W	42				640.
N ½, NE ¼ of SW ¼, N ½ of SE ¼	27	"	"	13				440.
NE¼ of SE¼, S½ of SE¼	33	"	"	13				120.
All	35	"	"	13				640.
N ½, E ½ of SW ¼, SE ¼	1	27S	3W	13, 42 & 157				554.44
W ½ of NE ¼, E ½ of NW ¼, S ½ of SW ¼, SE ¼	3	"	"	13 & 42				401.42
NE ¼, E ½ of NW ¼, S ½	7	"	"	13 & 42				561.90
All	9	"	"	42				648.
Lots 4, 5, 6, 9, 11, 12, 13, 14, 15, 16	11	"	"	13 & 42				407.79

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	13	27S	3W	42				640.
All	15	"	"	42				640.
All	17	"	"	13				640.
All	19	"	"	42				635.20
All	21	"	"	42				640.
E ½ and W ½ of W ½	23	"	"	13 & 42				480.
All	25	"	"	42				640.
W ½ of NE ¼, NW ¼, N ½ of SW ¼, SW ¼ of SW ¼, SE ¼	27	"	"	13 & 42				520.
All	29	"	"	42 & 100				640.
All	31	"	"	42				637.99
E ½, SE ¼ of NW ¼ & E ½ of SW ¼	35	"	"	13 & 42				440.

DOUGLAS COUNTY—Continued.

O. & C. R. R. Co., *et al.*

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
W. M.								
S ½ of NW ¼ & S ½	5	21S	4W	10				400.
All	7	"	"	10 & 25				642.20
NE ¼ of NE ¼, NW ¼, NE ¼ of SW ¼, NW ¼ of SE ¼	17	"	"	10				280.
W ½ of NE ¼, E ½ of NW ¼ and NW ¼ of SE ¼ ...	19	"	"	10				200.
SW ¼, N ½ of SE ¼	21	"	"	10				240.
N ½, N ½ of SW ¼, SE ¼ of SW ¼ and SE ¼	27	21S	4W	10				600.
N ½ of SW ¼	29	"	"	10				80.
N ½ of SW ¼, SW ¼ of SW ¼, S ½ of SE ¼	31	"	"	10				204.04

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
E ½, SW ¼ of SW ¼	33	21S	4W	10				400.
NW ¼, W ½ of SW ¼	35	"	"	10				240.
SW ¼	3	22S	4W	44				160.
N ½ of SE ¼	3	"	"	Unpat.				486.80
Lot 1, S ½ of N ½, W ½ of SW ¼, SE ¼ of SE ¼	5	"	"	25				316.24
All	7	"	"	10				677.44
E ½, N ½ of NW ¼, S ½ of SW ¼	9	"	"	10				480.
W ½ of W ½	11	"	"	25				160.
All	15	"	"	10 & 25				640.
NE ¼ of SW ¼, NW ¼ of SE ¼	17	"	"	10				80.

Douglas County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
N ½, N ½ of SW ¼ & SE ¼	21	22S	4W	10				560.
E ½ of NE ¼, NW ¼, E ½ of SW ¼	23	"	"	25				320.
E ½	27	"	"	Unpat.				320.
S ½ of NW ¼ & SW ¼	27	"	"	10				240.
SE ¼ of NE ¼, N ½ of S ½	29	"	"	10				200.
W ½ of NW ¼	31	22S	4W	10				99.60
S ½ of SE ¼	33	"	"	10				80.
N ½, N ½ of SW ¼ & SE ¼	35	22S	4W	10, 25, 101 & 142				560.
NE ¼ of NE ¼, SW ¼ of SE ¼	21	27S	4W	13				80.
E ½ of E ½, SW ¼ of NE ¼	23	"	"	13				200.

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	25	27S	4W	13				640.
NW ¼ of NE ¼, SE ¼ of NE ¼, S ½ of NW ¼, N ½ of SW¼ and Lots 1 & 2	29	"	"	13 & 42				294.14
NW ¼ of NW ¼, NE ¼ of SE ¼ and Lot 8	31	"	"	13				96.50
N½ of NE¼, SE¼ of NE¼	33	"	"	13 & 157				120.
SW ¼	35	"	"	13				160.
All	1	29S	4W	38				527.51
All	3	"	"	38				721.38
Lots 1, 3, 4, SW ¼ of NW ¼, E ½ of SE ¼	5	"	"	38				235.18
NW ¼ of NE ¼, N ½ of NW								

Douglas County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
¼, SE ¼ of NW ¼, E ½ of SW ¼ and W ½ of SE ¼	7	29S	4W	13				319.12
All	9	“	“	38				612.64
All	11	29S	4W	38				650.64
All	13	“	“	13				640.
N ½, SW ¼, N ½ of SE ¼	15	“	“	13				560.
SW ¼ of NE ¼, N ½ of SW ¼, NW ¼ of SE ¼, Lots 1 to 10, inc.	17	“	“	38 & 179				493.94
NE ¼, N ½ of NW ¼, E ½ of SE ¼ and Lot 3	19	“	“	13				358.60
SE ¼ of S W¼, S ½ of SE ¼,								

O. & C. R. R. Co., et al.

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
Lots 1, 3, 4, 5, 6	21	29S	4W	13 & 38				268.05
SW ¼ of SW ¼, Lot 4, and SE ¼	23	"	"	13				249.74
E ½ of E ½, NW ¼, W ½ of SW ¼	25	"	"	13				400.
All	27	"	"	13				640.
S ½ of SW ¼, SE ¼	29	29S	4W	13				240.
N ½ of N E¼, W ½ of NW ¼ of NW ¼, SW ¼ of NW ¼, NW ¼ of SW ¼ & S ½ of SW ¼	31	"	"	13				248.80
All	33	"	"	13				640.
N ½, SW ¼, N ½ of SE ¼, and SW ¼ of SE ¼	35	"	"	13				600.

DOUGLAS COUNTY—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
		W. M.						
Lot 1, S ½ of N ½, SW ¼, N ½ of SE¼, SW¼ of SE¼	3	21S	5W	25	480.54			
NW ¼ of NE ¼, S ½ of NE ¼ & NW ¼	5	"	"	25	281.96			
All	7	"	"	25	646.20			
NW ¼ of NE ¼, SE ¼ of NE ¼, E ½ of NW ¼, E ½ of SW¼, W½ of SE¼	13	21S	5W	10	320.			
All	19	"	"	25	650.20			
NW ¼ of NW ¼	21	"	"	10	40.			
S ½ of NE ¼, E ½ of NW ¼, NE ¼ of SW ¼, N ½ of SE ¼ & SW ¼ of SE ¼	25	"	"	10 & 25	320.			

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Douglas County—Continued.

Description				Patent No.	Timber	Iron	Water	Coal or Oil
Subdivision	Sec.	Twp.	Rge.					
W. M.								
E½ of NE¼, NE¼ of SW¼	27	21S	5W	10	120.			
E½ of NW¼, NE¼ of SW¼	29	"	"	10	120.			
W ½ of NW ¼	33	"	"	10	80.			
All	1	22S	5W	25				633.99
SW ¼ of NE ¼, S ½ of NW ¼, Lots 1, 2, 3, NE ¼ of SW ¼, N ½ of SE ¼, SE ¼ of SE ¼	3	"	"	10 & 25				396.37
NW ¼ of NE ¼, N ½ of NW ¼, SW ¼ of NW ¼, NW ¼ of SW ¼	5	"	"	10				205.40
W ½ of NE ¼, NW ¼, W ½ of SW ¼	7	"	"	10				338.31

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	11	22S	5W	10 & 25				640.
E ½ of NE ¼	13	"	"	25				80.
N ½, NE ¼ of SW ¼, N ½ of SE ¼	15	22S	5W	10				440.
SE ¼ of NE ¼	19	22S	5W	25				40.
E ¼ of SE ¼	23	"	"	10				80.
NE ¼ of NE ¼, S ½ of N ½, S ½	25	"	"	10				520.
NW ¼ of NE ¼, S ½ of NE ¼, S ½ of NW ¼, NE ¼ of SW ¼ and SE ¼	27	"	"	10				397.66
SE ¼ of SW ¼, SW ¼ of SE ¼	29	"	"	10				80.

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Douglas County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
NE 1/4 of SE 1/4	31	22S	5W	10				40.
W 1/2 of NE 1/4 & NW 1/4	33	"	"	10				240.
N 1/2 and Lot 1	35	"	"	10				340.36
N 1/2 of NE 1/4, W 1/2 & NW 1/4 of SE 1/4	5	23S	5W	10 & 208				431.36
NW 1/4 of NE 1/4, E 1/2 of NW 1/4, W 1/2 of SW 1/4, N 1/2 of SE 1/4 & SE 1/4 of SE 1/4	7	"	"	10				313.75
E 1/2 of NE 1/4 and SE 1/4	13	"	"	10				240.
W 1/2 of SW 1/4	17	"	"	10				80.
N 1/2, SW 1/4, N 1/2 of SE 1/4	19	"	"	10				546.70
SW 1/4 of NW 1/4	21	"	"	10				40.
S1/2 of NW1/4, N1/2 of SW1/4	29	"	"	10				160.

DOUGLAS COUNTY—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
		W. M.						
NW ¼ of NE ¼	31	23S	5W	10				40.
NE ¼ and S ½	13	28S	5W	13 & 42				480.
N ½ of NE ¼, SE ¼ of NE ¼, and NW ¼	23	"	"	13				280.
E ½, NE ¼ of NW ¼, S ½ of NW ¼, N ½ of SW ¼, SE ¼ of SW ¼	25	"	"	13 & 38				560.
N ½ of NE ¼	27	"	"	13				80.
E ½ of NE ¼	29	"	"	13				80.
N ½ of NE ¼, NW ¼, N ½ of SW ¼, SW ¼ of SW ¼, and NE ¼ of SE ¼	31	"	"	13, 42 & 208				408.32

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ND VERTICAL IN BOOK

Douglas County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
NW¼ of SW¼, S½ of SW¼	33	28S	5W	13 & 42				120.
NE ¼, E ½ of NW ¼, & S ½	35	"	"	13 & 42				560.
N ½ of NE ¼, NE ¼ of SW ¼, S ½ of SW ¼ & SE ¼	3	29S	"	13 & 153				362.66
SE¼ of NW¼, N½ of SW¼	5	"	"	13 & 92				120.
NE ¼ of NE ¼, S ½ of NE ¼, SE¼ of NW¼, SE¼	9	"	"	13				320.
N ½ of NW ¼, SW ¼ of NW ¼, NW ¼ of SW ¼, W ½ of SE ¼	11	"	"	13 & 179				240.
E½ of NE¼, W½ of NW¼	15	"	"	13				160.
E ½ of NE ¼ & SE ¼	17	"	"	13 & 42				240.
N ½, W ½ of SW ¼	21	29S	5W	13 & 179				400.

Douglas County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
SE ¼ of NE ¼, SW ¼ of NW ¼ of N ½ of SW ¼, SE ¼ of SW ¼ & SE ¼	25	29S	5W	13				360.
E ½ of NE ¼, Lot 1 & W½ of SE ¼	29	"	"	13				199.53
NW ¼ of NE ¼, S ½ of NE ¼, NW ¼, N ½ of SW ¼, SW ¼ of SW ¼	31	"	"	13 & 42				418.72
E ½ of E ½	35	"	"	13				160.
Lot 2, SW ¼, S ½ of SE ¼	19	20S	6W	10	282.58			
S ½	25	"	"	10	320.			
All	27	"	"	10	640.			
All	29	"	"	10	640.			

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UND VERTICAL IN BOOK

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	31	20S	6W	10	643.01			
N ½, E ½ of SW ¼, SE ¼	33	"	"	10	560.			
N ½, N ½ of SW ¼, SE ¼	35	"	"	10	560.			
Lot 3 & 4 and E ½ of SE ¼	7	27S	6W	27 & 90				96.27
NE ¼ of NE ¼, N ½ of NW ¼, SW ¼ of NW ¼, NW ¼ of SW¼ & S½ of SW¼	19	"	"	10				267.24
SW ¼, S ½ of SE ¼	25	28S	"	13				240.
NW¼ of SE¼, S½ of SE¼	31	28S	6W	13 & 143				120.
Lot 9	33	"	"	179				21.50
Lot 4	35	"	"	143				5.60
N½ of NE¼, SW¼ of NE¼	1	29S	6W	10				120.54
S ½ of NE ¼, N ½ of SE ¼,								

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
& Lots 4, 5, 6 and 7	3	29S	6W	13				223.55
All	5	"	"	13				645.80
E ½ of NE ¼, W ½ of NW ¼, NW ¼ of SW ¼, S ½ of SW ¼, NE ¼ of SE ¼ & S ½ of SE ¼	7	"	"	13 & 142				416.38
N ½ of NE ¼, SW ¼ of NE ¼, S ½ of SW ¼, W ½ of SE ¼ & Lots 1, 2, 3, 4, 5, 6, 7	9	"	"	13				446.91
SW ¼ and Lot 4	11	"	"	13				195.32
NE ¼, NE ¼ of NW ¼, S ½ of NW ¼ & S ½	13	"	"	13 & 42				600.
NE ¼, SW ¼, Lot 3	15	"	"	13				345.18

UND VERTICAL IN BOOK

DOUGLAS COUNTY—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
W. M.								
E ½ of NE ¼, NW ¼ of NW ¼, NE ¼ of SE ¼, S ½ of SE ¼ and Lots 1, 2, 3, 5	17	29S	6W	13, 96 & 157				309.80
NW ¼ of NE ¼, NW ¼, NW ¼ of SW ¼, SW ¼ of SE ¼	19	"	"	13				292.87
E½ & Lots 1, 2, 3, 4, 5, 6, 7&8	21	29S	6W	13				492.05
NE ¼ of NE ¼, S ½ of NE ¼, NW ¼ of NW ¼, S ½ of NW ¼, NE ¼ of SW¼, S ½ of SW ¼, & SE ¼	23	"	"	13 & 42				520.
NW ¼ of NE ¼, SE ¼ of								

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
NE ¼, NW ¼, N ½ of SW ¼ & E ½ of SE ¼	25	29S	6W	13				400.
NE ¼, E ½ of NW ¼, S ½	27	“	“	42				560.
NE ¼	29	“	“	13				160.
E ½	33	“	“	63				320.
N½ of NW¼, N½ of SW¼	35	“	“	13				160.
NE ¼ of SE ¼, S ½ cf SE ¼ and Lot 4	19	19S	7W	11	143.02			
Lots 3, 4, 5, 13, 14	21	“	“	24	197.06			
All	29	“	“	24	640.			
All	31	“	“	24	418.82			
All	33	“	“	24	631.60			
All	5	20S	7W	24	773.98			

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Douglas County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	7	20S	7W	24	371.98			
All	9	"	"	24	640.			
S ½	13	"	"	24	320.			
S ½ of NE ¼, NW ¼ & S ½.	15	20S	7W	24	560.			
All	17	"	"	24	640.			
All	19	"	"	24	395.20			
All	21	"	"	24	640.			
All	23	"	"	24	640.			
All	25	"	"	24	640.			
N ½ & SW ¼...............	27	"	"	24	480.			
All	29	"	"	24	640.			
All	31	"	"	24	423.58			
All	33	"	"	24	640.			

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
NE ¼ and S ½	35	20S	7W	24	480.			
NE ¼, NE ¼ of NW ¼, S ½ of NW ¼ & S ½	1	23S	"	10 & 25				656.40
S ½ of NE ¼, N ½ of NW ¼, N ½ of SW ¼, NW ¼ of SE ¼	3	"	"	10				281.26
Lots 2 and 3	7	"	"	10				49.10
Lots 7 and 8	9	"	"	10				41.70
Lots 4 and 16	11	"	"	10				76.13
All	13	"	"	25				640.
Lots 4, 5, 6 and NE¼ of SE¼	15	23S	7W	10 & 135				137.
Lots 1, 2, 3, 4, 5, 6 & W ½ of W ½	17	"	"	10				358.97

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
NE ¼ of NW ¼, SW ¼ of NW ¼, NW ¼ of SW ¼, Lots 6, 7, 8, 9	19	23S	7W	10				239.06
NW ¼ of NE ¼, NW ¼ of NW ¼, SE ¼ of NW ¼, W ½ of SE ¼, SE ¼ of SE ¼, Lots 1, 3, 4	21	23S	7W	10				352.95
Lots 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16	23	"	"	10 & 25				526.07
All	25	"	"	25				640.
Lots 5, 6, 7, 8, 10, 11	27	"	"	10				133.43
S ½	31	"	"	10				320.
Lot 3 & S ½ of SW ¼	33	"	"	10				118.20
Lots 1, 2, 3, 4, 7, 8, 9, 10, 11, 14,								

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
15, 16	35	23S	7W	25				482.95
Lots 1 & 4, SE ¼ of NE ¼, SW ¼ of NW ¼, E ½ of SE ¼	1	24S	7W	10 & 25				235.67
Lots 9, 10, 11 & 12	3	"	"	99				146.05
SW ¼ of N W¼, SW ¼ & W ½ of SE ¼	5	"	"	10				280.
All	7	"	"	99				661.52
Lots 1 to 12, inc.	9	"	"					
Lots 14, 15 & 16	9	24S	7W	99				608.91
Lots 3, 4, 9, S ½ of NW ¼, SW ¼ & SW ¼ of SE ¼	11	"	"	10 & 99				386.32
Lots 1, 2, 3, 6, 7, 8 & S ½ of								

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
SE ¼	13	24S	7W	10				206.76
Lots 4, 5, 6, 7, 8, 9, 10, 11, 12 & W ½ of SW ¼........	15	"	"	10 & 99				390.59
Lots 1, 2, 3, 4, 5, 6, NE ¼, SE ¼ of NW ¼, E ½ of SW ¼ & N ½ of SE ¼......	17	"	"	10 & 99				600.60
W½ of NE¼, NW¼ & S½..	19	"	"	99				566.76
Lots 1, 4, 5, 7, 11 & SE ¼ of SE ¼	21	"	"	10				188.88
All	23	"	"	99				639.52
All	25	"	"	99				640.
All	27	"	"	99				609.96
E ½ of SE ¼, Lots 4 & 5, NE								

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
¼, NE ¼ of N W¼	29	24S	7W	10				322.60
W½ of NW¼, S½ of SW¼ .	31	24S	7W	10				162.03
N ½ of NE ¼, SE ¼ of NW ¼, N ½ of S ½, Lots 1, 3, 4, 5, 6 and 7	33	"	"	10 & 99				494.56
All	35	"	"	99				640.
NE ¼, SE ¼ of SW ¼ & W ½ of SE ¼	5	27S	7W	10 & 27				278.72
All	7	"	"	27				633.60
SE ¼ of NW ¼, E ½ of SW ¼, and S E¼	15	27S	7W	10 & 135				280.
N ½ and SW ¼	17	"	"	27				480.
All	19	"	"	10 & 27				639.90

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Douglas County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
NE ¼ and S ½	23	27S	7W	10 & 90				480.
NW ¼ of NE ¼, N ½ of NW ¼, SW ¼ of NW ¼	25	"	"	10				160.
N ½, SW ¼, W ½ of SE ¼	27	"	"	10				560.
N ½ of NW ¼	31	"	"	10				82.48
NE ¼, E ½ of NW ¼, S ½ of SW ¼	33	"	"	10 & 169				320.
NE ¼ of SE ¼	33	30S	7W	42			40.	
NE ¼ of NE ¼	35	"	"	42			40.	
All	7	19S	8W	11	777.16			
W ½	9	"	"	11 & 73	320.			
SW ¼ of SW ¼	11	"	"	73	40.			
All	15	"	"	11	640.			

Douglas County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	17	19S	8W	11	640.			
All	19	"	"	11	776.80			
All	21	"	"	11	640.			
All	23	"	"	11	640.			
All	25	19S	8W	11	640.			
All	27	"	"	11	640.			
All	29	"	"	11	640.			
All	31	"	"	11	779.58			
All	33	"	"	11	640.			
All	35	"	"	11	640.			
All	1	20S	8W	24	640.39			
All	3	"	"	8	639.20			
All	5	"	"	8	639.30			

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DOUGLAS COUNTY—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
		W. M.						
All	7	20S	8W	8	788.39			
All	9	"	"	8	640.			
All	11	"	"	8 & 24	640.			
All	13	"	"	24	640.			
All	15	"	"	7, 8 & 24	640.			
NE ¼ of NW ¼, SE ¼ of SW ¼	17	"	"	8	80.			
E ½, Lots 1, 6, 7, 8, 9, 10, 11 and 12	19	"	"	8	634.05			
All	21	"	"	8 & 24	640.			
All	23	"	"	24	640.			
All	25	20S	8W	24	640.			
All	27	"	"	24	640.			

Douglas County—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
		W. M.						
All	29	20S	8W	8	640.			
All	31	"	"	8	788.59			
All	33	"	"	24	640.			
All	35	"	"	24	640.			
All	1	21S	8W	24				637.99
All	3	"	"	24				634.60
All	5	"	"	7, 8 & 24				635.76
All	7	"	"	8				789.80
All	9	"	"	24				640.
All	11	"	"	24				640.
All	13	"	"	24				640.
All	15	"	"	24				640.
All	17	"	"	24				640.

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DOUGLAS COUNTY—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
		W. M.						
All	19	21S	8W	8 & 24				793.60
All	21	"	"	24				640.
All	23	21S	8W	24				640.
All	25	21S	8W	24				640.
All	27	"	"	24				640.
All	29	"	"	24				640.
All	31	"	"	8 & 24				797.04
All	33	"	"	24				640.
All	35	"	"	24				640.
All	1	22S	8W	25				724.92
Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 14 and 15	3	"	"	25 & 139				462.44
Lots 2, 3, 4, 5, 6, 9, 10 & SW ¼								

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
of NW ¼	5	22S	8W	10 & 25				257.06
N ½ of NW ¼, SW ¼ of NW ¼, NW ¼ of SW ¼, Lots 3, 6, 7, 8, 9, 10 & 11........	7	"	"	8 & 25				301.60
SW ¼ of NW ¼, NW ¼ of SW ¼, Lots 9, 10, 11, 12, 16	9	"	"	10 & 78				180.79
Lots 1, 2, 3, 7, 8, 9, 10, 11, 14, 15 and 16	11	"	"	25				463.50
Lots 9 and 10	15	"	"	10				25.30
N½ of NE ¼, SW ¼ of NE ¼, W ½, W ½ of SE ¼, Lots 1, 2 and 3	17	"	"	10 & 32				566.78
All	19	"	"	6, 8 & 25				679.45

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
Lots 7 and 14	21	22S	8W	10 & 137				2.42
Lots 8, 9, 10 & 11...........	23	“	“	10				11.
NE 1/4, W 1/2 of NW 1/4......	25	“	“	10, 90 & 169				240.
Lots 2 to 12, inc..............	27	“	“	10 & 88				485.65
Lots 1, 2, 3, W 1/2 of W 1/2....	29	“	“	25				206.89
All	31	“	“	8 & 25				692.69
Lot 1, S 1/2 of NE 1/4, NW 1/4 NE 1/4 of SW 1/4, S 1/2 of SW 1/4	33	“	“	10 & 25				395.20
NW 1/4 of SW 1/4	33	“	“	Unpat.				40.
Lots 7 and 9	1	23S	8W	25				5.30
Lots 1, 2, 3, S 1/2 of N 1/2, S 1/2.	3	23S	8W	99				613.67

Douglas County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	5	28S	8W	99				669.48
E ½, Lots 7, 10, 11, 12	7	"	"	99 & 174				473.41
All	9	"	"	99				640.
W ½ of NW ¼, NW ¼ of SW ¼, S ½ of S ½, Lots 1, 5, 7	11	"	"	25 & 99				276.36
Lots 2, 3, 4, S ½ of N ½ & S ½	13	"	"	99				604.39
All	15	28S	8W	99				640.
All	17	"	"	99				640.
All	19	"	"	99				772.
All	21	"	"	99				640.
N ½ of N ½, SE ¼ of NW ¼ and S ½	23	"	"	99				520.

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Douglas County—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
		W. M.						
SE ¼ of NE ¼, NW ¼ of NW ¼, SW ¼, S ½ of SE ¼	25	23S	8W	10 & 25				320.
All	27	"	"	99				640.
All	29	"	"	99				640.
All	31	"	"	99				775.98
All	33	"	"	99				640.
All	35	"	"	99				640.20
SE ¼ of NE ¼, W ½, E ½ of SE ¼, SW ¼, SE ¼	1	26S	8W	27				477.75
All	3	"	"	145				639.52
All	5	"	"	145				642.40
All	7	"	"	145				640.80

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	9	26S	8W	145				640.
All	11	"	"	145				640.
All	13	"	"	145				640.
All	15	26S	8W	145				640.
All	17	"	"	145				640.
All	19	"	"	145				641.04
All	21	"	"	145				640.
All	23	"	"	145				640.
All	25	26S	8W	145				640.
All	27	"	"	145				640.
All	29	"	"	145				640.
All	31	"	"	145				640.92
All	33	"	"	145				640.

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	35	26S	8W	145				640.
S ½ of N ½, S ½ and Lots 1, 2, 3, 4	31	29S	8W	13				607.78
All	1	21S	9W	54				906.19
Lots 1, 2, 3, 4, 6, 7, 8, 9, 10, 15 and 16	3	"	"	54 & 58				472.08
S½ of SW¼, NW¼ of SE¼	3	"	"					
E ½ of NE ¼, NE ¼ of SW ¼, SW ¼ of SW ¼, E ½ SE ¼	5	"	"	6				240.
All	7	"	"	54				828.40
All	9	21S	9W	54				898.36
All	11	"	"	54 & 58				640.

Douglas County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
	W. M.							
All	13	21S	9W	54				657.20
All	15	“	“	54				640.
All	17	“	“	54				640.
All	19	“	“	54				645.88
All	21	“	“	54				640.
All	23	“	“	54				640.
All	25	“	“	54				650.55
All	27	“	“	58 & 54				640.
All	29	“	“	54				640.
All	31	“	“	54				642.78
All	33	“	“	54				640.
All	35	“	“	54				640.
All	1	22S	9W	111				626.33

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Douglas County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	3	22S	9W	111				629.94
S ½ of NE ¼, SE ¼ of NW ¼, NE ¼ of SW ¼, N ½ of SE ¼, Lots 1, 2, 3, 4, 5, 6, 9 and 10	5	"	"	111				468.86
Lots 6 to 16, inc.	7	22S	9W	111				525.88
S ½ of NE ¼, SE ¼ of NW ¼, SE ¼, Lots 3, 4, 5, 6, 7 8 and 9	9	22S	9W	111				569.60
N ½, SW ¼, N ½ of SE ¼	11	"	"	8				560.
S ½ of SE ¼, Lots 5 and 6	13	"	"	8				149.
N ½ of NE ¼, SW ¼ of SW ¼, Lots 8 and 9	15	"	"	6 & 8				160.31

Douglas County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
NW ¼ of SW ¼, SW ¼ of SE ¼, Lot 7	17	22S	9W	6 & 8				112.20
NE ¼ of NE ¼, NE ¼ of SW ¼, NE ¼ of SE ¼, Lots 1, 2, 3	19	“	“	6				288.25
SE ¼ of NE ¼, E ½ of SW ¼, W ½ of SE ¼, Lots, 4, 5, 6	21	“	“	111				328.44
N ½, SW ¼, W ½ of SE ¼	23	“	“	6				560.
All	25	“	“	111				640.
All	27	“	“	111				610.56
All	29	22S	9W	111				593.44
N ½ and SW ¼	31	“	“	6				481.76

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Douglas County—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
W. M.								
N ½ of NE ¼, SW ¼ of NE ¼, NW ¼, N ½ of SW ¼, SW ¼ of SW ¼, SE ¼ of SE ¼	33	22S	9W	6				440.
All	35	"	"	111				678.38
					36,723.19		80.	135,469.01
Coos County.								
Lots 6, 7, 10, 11	7	29S	10W	174				160.
All	13	"	"	24				640.
All	15	"	"	24				640.
All	17	"	"	9 & 24				640.
All	21	"	"	24				640.

Coos County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
N ½	23	29S	10W	24				320.
NE ¼	25	"	"	24				160.
NW ¼, NE ¼ of SW ¼ & S ½ of SW ¼	27	"	"	10 & 191				280.
All	29	29S	10W	24 & 27				640.
All	31	"	"	24				781.36
NW ¼ of SW ¼, S ½ of S ½	33	"	"	10				200.
SW ¼	35	"	"	24				160.
Lot 1 & S ½ of NW ¼	3	31S	12W	9				102.
SE ¼ of NE ¼, NW ¼, N ½ of SW ¼, SE ¼ of SW ¼, NE ¼ of SE ¼, and S ½ of SE ¼	5	"	"	9				438.76

O. & C. R. R. Co., et al.

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Coos County—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
		W. M.						
S ½ of NE ¼, SW ¼ of NW ¼, SW ¼ & N ½ of SE ¼	7	31S	12W	9 & 11				356.08
SW ¼ of NW ¼, NW ¼ of SW ¼	9	"	"	9				80.
Lots 2 and 3	11	"	"	9				51.90
SE ¼ of NE ¼, Lots 10, 11, 12, 14, 15, 16, 17, 18 and 19.	13	31S	12W	7 & 9				109.54
NE ¼ of NW ¼, NE ¼ of SW ¼, S ½ of SW ¼ & SE ¼	15	"	"	9				320.
E ½, N ½ of SW ¼, SE ¼ of SW ¼	17	"	"	9				440.
All	21	"	"	9				640.

Coos County—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
		W. M.						
Lots 2, 3, 4, 6, 9, 10, 11, 12, 13, 14, 15, 16	23	31S	12W	9				485.25
Lots 4, 5 and 12	25	"	"	9				126.27
All	27	"	"	9				640.
N ½ of NE ¼, NE ¼ of NW ¼	33	"	"	9				120.
N ½ of NE ¼, SE ¼ of NE ¼, W ½ of NW ¼, N ½ of SW ¼, SE ¼ of SW ¼ & S ½ of SE ¼	35	"	"	9				400.
Lots 1, 2, 3, 4 & SE ¼	1	31S	13W	9				318.02
								9,889.18

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CURRY COUNTY.

Description				Patent No.	Timber	Iron	Water	Coal or Oil
Subdivision	Sec.	Twp.	Rge.					
		W. M.						
NE ¼ of NW ¼, Lots 1 & 2, SW ¼ & W ½ of SE ¼	19	31S	12W	9				356.
SE ¼ of NW ¼, E ½ of SW ¼, NW ¼ of SE ¼, S ½ of SE ¼	29	"	"	9				240.
N½ of NE¼, SW¼ of NE¼	11	31S	13W	9				120.
NE ¼ of NE ¼, SW ¼ of NW ¼, NW ¼ of SW ¼, SE¼ of SW ¼, NE ¼ of SE ¼ and S ½ of SE ¼	13	"	"	9 & 174				280.
W ½ of NE ¼, NW ¼, NE ¼ of SW ¼, S ½ of SW ¼, SE ¼	23	31S	13W	9				520.

Curry County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
SE ¼ of NE ¼, S ½ of SW ¼, SW ¼ of SE ¼	25	31S	13W	9				160.
								1,676.

Josephine County.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
All	17	35S	5W	63		645.61		
NE ¼, NW ¼ of NW ¼, S ½ of NW ¼, W ½ of SW ¼, N ½ of SE ¼ & SE ¼ of SE ¼	19	"	"	13 & 179		481.39		
E ½ of SW ¼ & SE ¼	13	35S	6W	38		240.		
						1,367.00		

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JACKSON COUNTY.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
	W. M.							
All	1	34S	1W	42				638.86
Lots 1, 2, 7, 8, 9, W ½ of NW ¼, E ½ of SE ¼........	3	"	"	42				320.23
W½ of NE¼, E½ of NW¼.	5	"	"	13 & 42				158.54
NE ¼, N ½ of NW ¼, SE ¼ of NW ¼, NE ¼ of SW ¼, N ½ of SE ¼........	7	"	"	42				402.15
N ½, SW ¼, NW ¼ of SE ¼, S ½ of SE ¼	9	"	"	42				600.
All	11	"	"	42				640.
All	13	"	"	42				640.
SE ¼ of NE ¼, Lots 1 and 3 and SE ¼	15	"	"	10, 42& 150				274.88

Jackson County—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
		W. M.						
N ½, N ½ of SW ¼, SW ¼ of SW ¼ and SE ¼	17	34S	1W	42 & 150				600.
All	19	"	"	42				650.60
Lot 8 and W ½	21	"	"	10 & 42				356.37
All	23	"	"	42				640.
All	25	"	"	42				640.
E ½, N ½ of NW ¼, SE ¼ of NW ¼, E ½ of SW ¼	27	"	"	42 & 168				520.
N ½ of NE ¼, SW ¼ of NE ¼, W ½ & W ½ of SE ¼	29	"	"	42				520.
NE ¼ of NW ¼, SW ¼ and S ½ of SE ¼	31	34S	1W	42, 150 & 168				284.20
All	35	34S	1W	42				640.

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JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
	W. M.							
NW ¼ of SW ¼	17	38S	1W	179				40.
NE ¼ of SW ¼, S ½ of SW ¼, and Lot 1	21	"	"	38				147.04
E ½ of E ½, SE ¼ of SW ¼ & SW ¼ of SE ¼	29	"	"	13 & 38				240.
SW ¼ of NE ¼, NE ¼ of NW ¼, S ½ of NW ¼, SW ¼, NW ¼ of SE ¼ & S ½ of SE ¼	31	"	"	13 & 43				452.09
NW ¼ of NE ¼, NW ¼ of NW ¼, & S ½ of NW ¼	33	"	"	43				160.
SE¼ of NE¼, E½ of SE¼	35	"	"	43 & 152				120.
Lots 3, 4, 5, 6, 11, 12, 13, 14,								

JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
15 and 16	1	33S	2W	13 & 42				420.95
All	3	"	"	42 & 157				636.80
All	5	"	"	42				634.64
NW ¼ of NE ¼, S ½ of NE ¼, NW ¼ and S ½	7	"	"	42				633.16
All	9	"	"	42				640.
All	15	"	"	13 & 42				640.
All	17	"	"	42				640.
All	19	"	"	42				675.16
S ½ of SW ¼	21	"	"	42				80.
N ½, N ½ of SW ¼, SE ¼ of SW ¼ & SE ¼	23	"	"	42				600.
All	25	33S	2W	42				640.

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JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	27	33S	2W	13 & 42				640.
All	29	"	"	42				640.
All	31	"	"	42				672.28
N ½ of NE ¼, SE ¼ of NE ¼, NW ¼, NW ¼ of SW ¼, NE ¼ of SE ¼ & S ½ of SE ¼	33	"	"	13				440.
All	35	33S	2W	42				640.
All	1	34S	2W	42				636.76
N ½ of NE ¼, SW ¼ of NE ¼, W ½, W ½ of SE ¼, SE ¼ of SE ¼	3	"	"	42				551.88
W ½ of NE ¼, NW ¼, S ½.	5	"	"	42				560.79

JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	7	34S	2W	42				646.40
E ½ & W ½ of NW ¼	9	"	"	13 & 42				400.
NE ¼, NE ¼ of NW ¼, SW ¼, N ½ of SE ¼, SW ¼ of SE ¼	11	"	"	42 & 100				480.
E ½, NW ¼ of NW ¼, S ½ of NW ¼ and SW ¼	13	"	"	42				600.
NE ¼ of NE ¼, W ½ of NE ¼, NW ¼ and S ½	15	"	"	42				600.
NW ¼ and S ½	17	34S	2W	42 & 168				480.
E ½, S ½ of NW ¼, SW ¼	19	"	"	13 & 42				561.24
N ½ of NE ¼, SE ¼ of NE ¼, SE ¼ of NW ¼, W ½								

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JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
of SW ¼, NE ¼ of SE ¼	21	34S	2W	13				280.
All	23	"	"	42 & 150				640.
NE ¼, N ½ of NW ¼, SW ¼ of NW ¼, W ½ of SW ¼, and NE ¼ of SE ¼	25	"	"	42				400.
NE ¼ of NE ¼, S ½ of NE ¼, E ½ of NW ¼, NE ¼ of SW ¼, S ½ of SW ¼ & SE ¼	27	"	"	42				480.
N ½ of SE ¼	29	34S	2W	42				80.
NW ¼ of NE ¼, S ½ of NE ¼, W ½ of NW ¼, E ½ of SW ¼, E ½ of SE ¼	31	"	"	42				360.

JACKSON COUNTY—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
		W. M.						
NE ¼, S ½ of NW ¼, S ½ of SW ¼, N ½ of SE ¼, SE ¼ of SE ¼	33	34S	2W	42				440.
NE ¼, N ½ of NW ¼, SW ¼ of NW ¼, N ½ of SE ¼	35	"	"	42				360.
NE ¼, NE ¼ of NW ¼	1	35S	2W	42				199.64
NW ¼ of NE ¼, SW ¼ of NW ¼, N ½ of NW ¼, SW ¼, W ½ of SE ¼	3	"	"	42 & 150				398.77
S½ of NE¼, NW¼ of SE¼	5	35S	2W	42 & 157				120.
E ½	7	"	"	42 & 150				320.
NE ¼ of NE ¼, SW ¼ of NE ¼, S ½ of NW ¼, SW ¼,								

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JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
N ½ of SE ¼	9	35S	2W	42				400.
SW ¼ of NW ¼, NE ¼ of SW ¼	15	"	"	42 & 44				80.
S ½ of N ½ and S ½	17	"	"	42 & 150				480.
N½ of NE¼, SW¼ of NE¼	19	"	"	42				120.
NW ¼ of NE ¼, SE ¼ of NE ¼, SW ¼ of SW ¼, E ½ of SE ¼	21	"	"	42				200.
SE ¼ of SE ¼	23	"	"	42				40.
SE ¼ of NE ¼	25	"	"	150				40.
NE¼ of SE¼, S½ of SE¼	29	35S	2W	150				120.
S ½ of NE ¼, NW ¼ & S ½	35	"	"	42				560.
NE ¼ of NE ¼, S ½ of NW								

JACKSON COUNTY—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
		W. M.						
¼, SW¼ & W½ of SE¼.	1	36S	2W	13				359.92
E ½	3	"	"	38				320.78
SW ¼ of NE ¼, SE ¼ of NW ¼, NE ¼ of SW ¼, S ½ of SW ¼, SE ¼.....	5	"	"	13				360.
N ½ of NE ¼, NE ¼ of NW ¼, S ½ of NW ¼, and SE ¼	7	"	"	72 & 101				360.51
W ½	9	36S	2W	38				320.
NW ¼ of NE ¼ & Lot 4.....	11	"	"	13				79.26
Lot 7	13	"	"	38				23.39
Lots 9 and 10	15	"	"	38				22.88
S ½ of NE ¼ of NW ¼, NW								

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JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
¼ of NW ¼ and SW ¼	19	36S	2W	126 & 143				224.51
Lots 4, 5, 6, 7	21	"	"	13 & 179				123.29
NW ¼ of SE ¼	29	"	"	80				40.
NW ¼, S ½ of SW ¼, W ½ of SE ¼	1	38S	1E	126				319.11
NE ¼ of NW ¼ SW ¼ of NW ¼	3	"	"	13				79.08
NW ¼ of NE ¼, SE ¼ of NE ¼, NE ¼ of NW ¼, S ½ of NW ¼, N ½ of SW ¼, SW ¼ of SW ¼	5	"	"	13 & 153				318.83
NE ¼ of NE ¼, S ½ of NE ¼, SE ¼ of NW ¼, NE								

JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
¼ of SW¼, N½ of SE¼.	11	38S	1E	13 & 153				280.
E ½ and E ½ of W ½.......	13	"	"	39				480.
SW ¼ of NE ¼, NW ¼ of SE ¼	15	"	"	39				80.
SW ¼ of NW ¼...........	31	"	"	39				43.32
W ½ of NE ¼.............	7	39S	1E	90				80.
Lot 2, SW ¼ of NW ¼, NW ¼ of S W ¼............	17	"	"	184				120.63
All	19	39S	1E	168				642.40
NE ¼, E ½ of W ½, N ½ of SE ¼, SW ¼ of SE ¼, W ½ of SE ¼ of SE ¼.....	21	"	"	& 168 88,136				460.
SW ¼ of SW ¼	25	39S	1E	13				40.

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JACKSON COUNTY—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
		W. M.						
NE ¼	27	39S	1E	184				160.
SE ¼ of SE ¼ of NW ¼	27	"	"	Unpat. Not listed				10.
Lot 1	29	"	"	Unpat. Not listed				40.46
NW ¼ & S ½	1	38S	2E	10				479.23
All	3	"	"	39				639.92
N ½, SW ¼ of SW ¼, & SE ¼ of SE ¼	5	"	"	39 & 44				403.84
All	7	"	"	39				641.03
All	9	"	"	10 & 39				640.
N ½ of NE ¼, SW ¼ of NE ¼, W ½, S ½ of SE ¼	11	"	"	10 & 39				520.

JACKSON COUNTY—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
		W. M.						
All	13	38S	2E	39				640.
All	15	"	"	10				640.
N ½, SW ¼, N ½ of SE ¼, SW ¼ of SE ¼	17	38S	2E	39				600.
SW ¼	19	"	"	39				161.28
NW ¼ of NE ¼, SW ¼ of SW ¼, W ½ of SE ¼	21	"	"	39				160.
E½ of NE¼, N½ of NW¼	23	"	"	10 & 153				160.
NW ¼ of NE ¼, S ½ of N ½, N½ of SE ¼, SE ¼ of SE ¼	25	38S	2E	10				320.
NW ¼ of NE ¼, NW ¼, SE ¼ of SW ¼	27	"	"	39				240.

JACKSON COUNTY—Continued.

Description				Patent				Coal or
Subdivision	Sec.	Twp.	Rge.	No.	Timber	Iron	Water	Oil
	W. M.							
SW ¼	29	38S	2E	39				160.
SE ¼ of NW ¼, NE ¼ of SW ¼, NW ¼ of SE ¼	31	"	"	127 & 149				120.
NE ¼ of NW ¼, S ½ of NW ¼, NW ¼ of SW ¼, SE ¼ of SW ¼, N ½ of SE ¼, SE ¼ of SE ¼	33	"	"	39 & 158				320.
W ½ of NE ¼	33	"	"	Not listed Unpat.				80.
E ½ of SW ¼	35	"	"	39				80.
W ½ of NE ¼, S ½ of NW ¼, SW ¼, W ½ of SE ¼	1	39S	2E	10, 39 & 179				400.50
All	3	"	"	10 & 39				641.86

JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
SW ¼ of NW ¼	5	39S	2E	39				40.
Lot 8 of NW ¼	7	"	"	179				3.
NE ¼ of NE ¼, S ½ of NE ¼, NE ¼ of S E¼	9	39S	2E	39				160.
NE ¼ of NE ¼, S ½ of NE ¼, NW ¼ of NW ¼, S ½ of NW ¼, N ½ of SW ¼, SE ¼ of S W¼, NW ¼ of SE ¼, S ½ of SE ¼	11	"	"	10, 39, 127 & 179				480.
NW ¼ of NE ¼, S ½ of NE ¼, W ½, NE ¼ of SE ¼, S ½ of SE ¼	13	"	"	10				560.
NE ¼ of NE ¼, S ½ of NE								

JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
¼, N ½ of NW ¼, SE ¼ of NW ¼, W ½ of SW ¼	15	39S	2E	39, 143 & 168				320.
SE¼ of SW¼, W½ of SE¼	21	"	"	39				120.
N ½ of NE ¼, SE ¼ of NE ¼, NE ¼ of SW ¼, SW ¼ of SW ¼, NE ¼ of SE ¼, S ½ of SE ¼	25	"	"	39				320.
N ½ of NE ¼, NW ¼, NE ¼ of SE ¼	27	"	"	39 & 100				280.
Lot 1	31	"	"	127				9.58
NE ¼ of NW ¼, E ½ of SW ¼, SE ¼	33	"	"	10 & 127				280.
N ½ of NE ¼, SE ¼ of NE								

JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
¼, N ½ of NW ¼, NE ¼ of SE ¼	35	39S	2E	39 & 143				240.
								46,842.04

Schedule of unsold lands of the West Side Oregon and California Railroad Company grant —which lands are under reservation from sale on account of timber, iron, coal, or oil, which they are known or supposed to contain and which substances are necessary to the railroad company in the operation and maintenance of its railroad.

COLUMBIA COUNTY.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	5	4N	3W	16				667.
E ½	31	5N	3W	16				320.
All	33	"	"	16				640.
All	35	"	"	16				640.
								2,267.

WASHINGTON COUNTY.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
W ½, E ½ of SE ¼	25	3N	3W	17				400.
NE ¼, NE ¼ of NW ¼, S ½ of NW ¼ & S ½	35	"	"	17				600.
								1,000.

West Side.

County	Timber	Iron	Water	Coal or Oil	
Columbia				2,267.	
Washington				1,000.	
Total				3,267.	Acres

East Side.

County	Timber	Iron	Water	Coal or Oil	
Clackamas				3,110.59	
Marion				2,036.27	
Linn	9,331.65			1,239.02	
Lane	110,576.66			5,038.23	
Douglas	36,723.19		80.	135,469.01	
Coos				9,889.18	
Curry				1,676.	
Josephine		1,367.			
Jackson				46,842.04	
Total	156,631.50	1,367.	80.	208,567.34	Acres
Grand Total				366,645.84	Acres

Exhibit No. 9

A few instances of Deeds made by the Oregon and California Railroad Co., and expressly approved by the Interior Department of the United States, conveying more than 160 acres of land-grant Forest Reserve lands to a single purchaser, at price exceeding $2.50 per acre; such Deeds having been submitted by the direct or mesne grantee thereunder, as Lieu Bases for Lieu Selection of other lands, under the Act of Congress approved June 4th, 1897 (30 Stat. at Large 11-30). The Deeds from the Oregon and California Railroad Co., showing on the faces thereof the following true acreage and consideration price paid.

Contract No.		Acres	Consideration
5392	Dated June 24, '99. Deed dated June 26, '99 to A. B. Hammond Co. Land situated in Klamath Co., Oregon—Conveyed to U. S. by Deed of Marcus Daly (grantee of A. B. Hammond Co.) and Wife Sept. 14, '99, as Lieu Base for Lieu Selection of land in Montana. Lieu Base Deed and Lieu Selection approved by Int. Dep't Aug. 31, '03....................................	5,042.96	$17,650.36

Contract No.		Acres	Consideration
5393	Dated June 24 '99. Deed dated June 26 '99 to John Claflin. Land situated in Klamath Co., Oregon. Conveyed to U. S. by Deed of Marcus Daly (grantee of John Claflin) and Wife Sept. 14, '99 as Lieu Base for Lieu Selection of land in Montana, Lieu Base Deed and Lieu Selection approved by Int. Dep't May 2 '03	5,018.18	$17,546.13
5394	Dated June 24 '99. Deed dated June 26 '99 to Big Blackfoot Milling Co. Land situated in Klamath Co., Oregon. Conveyed to U. S. by Deed of Big Blackfoot Milling Co., dated Aug. 30 '99, as Lieu Base for Lieu Selections of land in Montana. Lieu Base Deed and Lieu Selections approved by Int. Dep't Oct. 28 '02, Feb. 5 '03, and July 12 '07..............................	6,214.84	$21,750.18
5395	Dated June 24 '99. Deed dated June 26 '99 to Marcus Daly. Land situated in Jackson Co., Oregon. Conveyed to U. S. by Deed of Marcus Daly and Wife, dated Sept. 14 '99, as Lieu		

EXHIBIT 9—Continued.

Contract No.		Acres	Consideration
	Base for Lieu Selection of land in Montana. Lieu Base Deed and Lieu Selection approved by Int. Dep't May 13 '03	3,760.00	$13,160.00
5400	Dated July 31 '99. Deed dated July 5 '99 to Nelson P. Wheeler. Land situated in Jackson Co., Oregon. Conveyed to U. S. by Deed of Nelson P. Wheeler and Wife, dated July 18 '99, as Lieu Base for Lieu Selection of land in Oregon. Lieu Base Deed and Lieu Selection approved by Int. Dep't June 17 '03.........	1,000.00	$3,500.00
5401	Dated July 3 '99. Deed dated July 5 '99 to R. S. Moore. Land situated in Jackson Co., Oregon. Conveyed to U. S. by R. S. Moore, W. K. Flowerree and Wife, Mary E. Coffin and Husband, S. A. Parker and Wife, and Conrad Kuhrs, as Lieu Bases for Lieu Selections in Minnesota, Oregon and Montana. Lieu Base Deed and Lieu Selections approved by Int. Dep't April 7, 22 and 27 '03, January 17 '03, January 9 '04 and June 1 '07......	9,044.35	$31,655.22
5402	Dated July 3 '99. Deed dated July 5 '99 to Wm. Marlatt. Land		

EXHIBIT 9—Continued.

Contract No.		Acres	Consideration
	situated in Jackson Co., Oregon. Conveyed to U. S. by Deed of Wm. Marlatt, dated July 7 '99, as Lieu Base for Lieu Selection of land in Oregon. Lieu Base Deed and Lieu Selection approved by Int. Dep't July 31 '03	40.00	$140.00
5405	Dated July 5 '99. Deed dated July 5 '99 to H. A. Smith. Land situated in Jackson Co., Oregon. Conveyed to U. S. by Deed of John T. Murphy (assignee of H. A. Smith) dated Sept 1 '99, as Lieu Bases for Lieu Selections in Montana and Idaho. Lieu Base Deed and Lieu Selections approved by Int. Dep't Feb. 9 and March 10 '05	112.96	$395.36
5409	Dated July 14 '99. Deed dated July 14 '99 to A. L. Mills. Land in Lane and Jackson Cos. Oregon. Conveyed to U. S. by Deeds of A. L. Mills dated Oct. 27 '99 and April 18 1900, as Lieu Bases for Lieu Selections in Washington. Lieu Base Deed and Lieu Selections approved by Int. Dep't Dec. 13 '01 and July 9 '02	522.00	$1,827.00

EXHIBIT 9—Continued.

Contract No.		Acres	Consideration
5551	Dated Dec. 26 '99. Deed dated Dec. 26 '99 to Frank D. Nash. Land in Lane Co., Oregon. Conveyed to U. S. by Deed of Frank D. Nash, dated Jan. 31 1900, as Lieu Basis for Lieu Selection in Washington. Lieu Base Deed and Lieu Selection approved by Int. Dep't Oct. 19 '07	640.00	$2,240.00
5598	Dated Feb 13 1900. Deed dated Feb. 13 1900 to W. I. Vawter. Land in Lane Co., Oregon. Conveyed to U. S. by Deed of W. I. Vawter and wife, dated March 3 1900, as Lieu Basis for Lieu Selection in Oregon. Lieu Base Deed and Lieu Selection approved by Int. Dep't Dec. 20 '02	2,000.00	$7,500.00
5603	Dated Feb. 16 1900. Deed dated Feb. 16 1900 to W. I. Vawter. Land in Lane Co., Oregon. Conveyed to U. S. by Deed of W. I. Vawter and Wife, dated March 8 1900, as Lieu Basis for Lieu Selection in Oregon. Lieu Base Deed and Lieu Selection approved by Int. Dep't March 28 and April 20 '03	59.90	$209.65

EXHIBIT 9—Continued.

Contract No.		Acres	Consideration
5606	Dated Feb. 16 1900. Deed dated Feb. 16 1900 to C. A. Cogswell. Land in Lane Co., Oregon. Conveyed to U. S. by Deed of C. A. Cogswell and Wife, dated March 8 1900, as Lieu Basis for Lieu Selection in Oregon. Lieu Base Deed and Lieu Selection approved by Int. Dept. March 1 '03	40.00	$160.00
5626	Dated March 2 1900. Deed dated March 2 1900 to Wm. G. Gosslin. Land in Lane Co., Oregon. Conveyed to U. S. by Deed of W. W. Curtis (assignee of Wm. G. Gosslin) as Lieu Bases for Lieu Selections in California, Oregon, Washington, Idaho and South Dakota, Lieu Base Deed and Lieu Selections approved by Int. Dep't Aug. 26 '02, Oct. 20 '03, Oct. 23 '03, April 29 '04, Dec. 18 '06	8,579.13	$30,026.95

Exhibit No. 10

A few instances of suits brought by the United States against the Oregon and California Railroad Co., in the U. S. Circuit Court for the District of Oregon, to quiet title to or cancel patents for lands of the said Company's East Side land-grant, in which the pleadings or proofs showed sales by said Company of lands in suit in quantities exceeding 160 acres to single purchasers or at prices exceeding $2.50 per acre, without objection made by the United States to any such sale because of land quantity sold to one purchaser, or sale price:

Register No.	Bill Filed	Land Sales Shown	
1982	Feb. 3, 1892	SE ¼ and S ½ of NE ¼ of Sec. 3, T. 1 S., R. 4 E., 240 acres to John A. Hurlburt for	$720.00
2657	Feb. 19, 1901	W ½ of SE ¼ of Sec. 9, T. 5 S., R. 1 E.; 80 acres to S. O. Owen for	$240.00
		SW ¼ of NW ¼ of Sec. 3, T. 26 S., R. 2 E.; 40 acres to John Alfred for	$180.00
		SE ¼ of NE ¼ of Sec. 21, T. 4 S., R. 2 E.; 40 acres to E. L.	

EXHIBIT 10—Continued.

Register No.	Bill Filed	Land Sales Shown	
		Trullinger for	$112.00
		Lot 1 of Sec. 7, T. 5 S., R. 2 E.; 26 acres to O. W. Sturgess for	$ 84.00
		SE ¼ of SE ¼ of Sec. 35, T. 2 S., R. 3 E.; 40 acres of Ludwig Dane for	$212.00
		W ½ of NW ¼ of Sec. 19, T. 2 S., R. 2 W.; 80 acres to E. L. McCormick for	$524.00
		W ½ of SW ¼ of Sec. 35, T. 9 S., R. 3 W.; 80 acres to J. W. Fidler for	$573.00
		N. ½ of SW. ¼ of Sec. 9, T. 18 S., R. 5 W.; 80 acres to Gust Petzold for	$620.00
		SW ¼ of NE ¼ and W ½ of SE ¼ of Sec. 3, T. 10 S., R. 6 W.; 80 acres to T. O. Bevens for	$334.00
		40 acres to J. H. Watson for	$226.50
2658	Feb. 25, 1901	SE ¼ of NE ¼, SW ¼ of NW ¼, SE ¼, NE ¼ of SW ¼	

EXHIBIT 10—Continued.

Register No.	Bill Filed	Land Sales Shown	
		of Sec. 35, T. 4 S., R. 3 E.; 280 acres to S. W. R. Jones for	$675.00
2663	Feb. 27, 1901	NE ¼ of SW ¼ and NW ¼ of SE ¼ of Sec. 21, T. 1 S., R. 3 E.; 80 acres to A. D. Gibbs for	$267.00
		SE ¼ of SW ¼ of Sec. 21, T. 1 S., R. 3 E.; 40 acres to Mrs. Kine for	$200.00
		SW ¼ of SE ¼ of Sec. 21, T. 1 S., R. 3 E.; 40 acres to A. W. Scott for	$200.00

Exhibit No. 11

Following is a correct schedule showing the amount of land patented, compiled by years, separately stated as East Side land grant, and showing the Acts of Congress which are recited in such patents:

EAST SIDE GRANT

None of the patents issued under the East Side grant recite the Oregon and California Railroad Company "as successor to" any other company.

Year	Acts of Congress Recited	Acres
1871	July 25, 1866—June 25, 1868	152,764.67
1872	Act 1866 and 1868 and April 10, 1869	69,061.63
1876	Acts 1866, 1868 and 1869	14,629.67
1877	Acts 1866, 1868 and 1869	86,622.71
1893	Acts 1866, 1868 and 1869	292,486.90
1894	Act 1866	382,352.95
1895	Act 1866	558,718.40
1896	Patent 31 recites Lieu Act of June 22nd, 1874, and Act of July 25th, 1866;	

EXHIBIT 11—(EAST SIDE GRANT)—Continued

Year	Acts of Congress Recited	Acres
	all others recite Act of 1866	709.729.99
1897	Act of July 25th, 1866	37,231.90
1898	Act of July 25th, 1866	70,014.02
1899	Act of July 25th, 1866	151,064.30
1900	Act of July 25th, 1866	42,841.33
1901	Act of July 25th, 1866	60,466.60
1902	Patents 178 and 180, Lieu Act of June 22nd, 1874, and Act of July 25th, 1866; all other Acts of 1866	36,166.20
1903	Patent 189 recites Lieu Act of June 22, 1874, and Act of 1866; all others recite Act of July 25, 1866	36,438.08
1904	Act of July 25, 1866	39,339.08
1905	Act of July 25, 1866	25,838.67
1906	Act of July 25, 1866	20.
1909	Acts of 1866-1868 and 1869	161.75
	Total	2,765,948.85

EXHIBIT 11—Continued.

WEST SIDE GRANT

The following patents were made to the Oregon and California Railroad Company "as successor to the Oregon Central Railroad Company":

Year	Acts of Congress Recited	Acres
1895	Act of May 4th, 1870	93,079.
1896	" " "	32,288.24
1897	" " "	2,388.
1898	" " "	72.75
1899	" " "	520.
1903	" " "	270.14
	Total	128,618.13
	Total acres, both grants	2,894,566.98

Of the acres so patented as being West Side grant lands, 2,329.07 acres are in fact within the indemnity limits of the East Side grant, and should have been patented as East Side lands; furthermore, of the acreage patented as East Side lands, 6,523.23 acres are situated within the limits of the West Side grant and not within the limits of the East Side grant, and should have been patented as West Side grant lands.

(Endorsed.)

Joint and Several Answer of O. & C. R. R., Southern Pacific Company and Stephen T. Gage.

Filed Sept. 5, 1911.

G. H. MARSH,
Clerk.

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